

THAILAND'S EMERGENCY DECREE:

NO SOLUTION

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THAILAND'S EMERGENCY DECREE: NO SOLUTION

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Muslim-majority region of southern Thailand continues to experience a relatively low-level insurgency but a state of emergency imposed on three provinces is no solution to the conflict that has claimed more than 1,000 lives since January 2004. The decree has deepened mistrust of the security forces, worsened public discontent with the government's approach to the insurgency and heightened the risk of human rights abuses. Prime Minister Thaksin Shinawatra should take immediate steps to moderate the decree or risk plunging the area into worse violence.

The Executive Decree on Public Administration in Emergency Situations took effect on 19 July 2005 in Narathiwat, Pattani and Yala and was renewed for three months on 19 October. While it was designed to be a softer version of martial law, many see it as harsher. Far from helping to restore trust between the government of Prime Minister Thaksin and the Malay Muslims, the decree has further eroded it.

The head of the government-appointed National Reconciliation Commission says the decree gives security forces a "licence to kill". Two provisions, one granting law enforcement officers immunity from prosecution and the other suspending the jurisdiction of administrative courts to prosecute officials for human rights violations, leave citizens with no redress for abuses. Despite some legal safeguards, the decree leaves loopholes that heighten the risk of arbitrary detention and mistreatment of detainees. In practice, the government's powers are the same as they were under martial law, but with less accountability.

One particular problem that has emerged is blacklisting, where police and soldiers go to villages with lists of suspects, often based on weak intelligence and weaker evidence. Those on the lists are told to surrender or face arrest or worse. While the government denies such lists are being used, village headmen confirm the practice.

Three incidents demonstrate the depth of fear and alienation in areas designated "red zones" -- those suspected of being insurgent strongholds. One involves the death of an imam, where suspicion of the government

is preventing any official investigation. The second involves the flight to Malaysia of 131 villagers, and the third relates to mysterious murders that led angry villagers to capture and detain soldiers who were later killed by local militants.

A by-product of the deteriorating situation has been a sharp downturn in relations between Thailand and Malaysia, related to Bangkok's long-running accusation that its neighbour turns a blind eye to Thai separatist militants taking refuge in northern states and aggravated in recent months by inept handling of the "refugee" issue.

Thus far, there is no evidence of outside involvement in the violence, despite mounting speculation. However, there are legitimate concerns that if the violence worsens, it might be exploited by jihadi groups to establish a new area for training and recruitment, as has happened in other conflict zones in South East Asia.

The only clear impact of the emergency decree has been increased alienation of Malay Muslims. Despite the absence of any demonstrable strategic gain from the emergency decree, the cabinet renewed it. Unless relations between the security forces and southern Muslims begin to improve, however, and until reports of abuses and disappearances can be properly investigated, the growing alienation may turn into sympathy, support and even recruits for the insurgency.

RECOMMENDATIONS

To the Thai Government:

1. Repeal Sections 16 and 17 of the decree that exclude access to administrative courts and grant enforcement officials immunity from prosecution.
2. Amend Sections 11 and 12 on arrest and detention to affirm explicitly constitutional rights such as immediate access to a lawyer of choice and to inform family of arrest and detention.
3. Move ahead as quickly as possible with plans to establish a centre with forensic capability to investigate disappearances.

4. Support expansion of the joint initiative of the National Reconciliation Commission, the Lawyers Council and the National Human Rights Commission to provide legal aid and human rights monitoring in the southern provinces.
5. Examine, with the National Reconciliation Commission, mechanisms for continuing regular consultations with southern community and religious leaders after the Commission's mandate ends, perhaps by setting up a smaller permanent body based in the south.
7. Expand cultural awareness, and particularly Malay language training, for officers stationed in the Fourth Army region.
8. End the blacklisting of suspects; treat suspect lists as internal documents, and make arrests only on solid evidence, not vague suspicions.
9. Continue the initiative of encouraging voluntary surrenders of low-level militants but ensure that surrenders are genuinely voluntary and not connected to blacklists.

Jakarta/Brussels, 18 November 2005

To the Southern Border Provinces Peace Building Command:

6. Expand the initiative already being implemented by some local commanders and recommended by the National Reconciliation Commission to establish councils of community and religious leaders to advise and assist officers with community liaison.

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I. INTRODUCTION

A low-level separatist insurgency has been steadily gathering momentum in Thailand's southern mainly Malay Muslim provinces of Pattani, Yala and Narathiwat since January 2004. The resulting death toll has surpassed 1,000.¹

A law imposing a state of emergency is exacerbating the climate of fear in the three violence-wracked southern provinces. Relations between officials and Malay Muslim villagers are at an unprecedented low. Martial law, declared in January 2004 in response to a well-planned insurgent attack, led to serious abuses by security forces, notably the bloody suppression of the Tak Bai protest in October 2004. These in turn gave new life to the Malays' historical grievances stemming from decades of discrimination and attempts at forced assimilation by the Thai state.

The Executive Decree on Public Administration in Emergency Situations (hereafter the decree), imposed on Narathiwat, Pattani and Yala on 19 July 2005 and renewed on 19 October, was conceived by Prime Minister Thaksin as an alternative to martial law.² With better safeguards against practices such as arbitrary detention, he argued, it would protect the population while allowing security forces to continue to operate effectively.

But far from helping solve the problems, it has made them worse. Trust between villagers and authorities has eroded completely in some areas. Crisis Group interviews with villagers, Thai legal and security experts, human rights advocates and members of the National Reconciliation Commission (NRC) reveal widespread concern about the increased potential for abuses under Section 17, which grants enforcement officers immunity from prosecution for any action committed in the line of duty. As the NRC Chair, Anand Panyarachun, pointed out in a televised debate with Thaksin shortly after it was enacted, the

decree is perceived by southern Muslims as granting officials a "license to kill".³

Fear and resentment stemming from a failure to provide justice for past abuses has fuelled violence in the region for decades and directly impacted recruitment into militant groups.⁴ Granting immunity to officials with a track record of abusive behaviour toward locals will only deepen the cycle of violence and retribution.

Any public relations boost the government had hoped to gain from the decree has gone instead to its opponents, including separatist militant groups. At least one killing has already been explicitly linked to the decree, with a leaflet left by a victim's body warning, "if you continue to use the emergency laws on Muslim neighbourhoods, don't hope that this land will be safe and peaceful".⁵

This report examines in detail three recent incidents in separatist strongholds: two alleged extra-judicial killings, followed in one case by the beating to death of two soldiers by locals and suspected separatist militants, and the flight of 131 Thai Malay Muslims to Malaysia.

All three incidents, regardless of the identities of the perpetrators, stem from and contribute to a breakdown of trust between the security forces and Malay Muslim communities. The deterioration of these relationships has not been caused solely by the decree, and in at least one case separatist militants manipulated local fear for their own ends. But it is clear that perceptions of the decree and policies flowing from it have significantly exacerbated the problem.

¹ For background on the insurgency and related violence, see Crisis Group Asia Report N°98, *Southern Thailand: Insurgency, Not Jihad*, 18 May 2005.

² "Martial law is unacceptable to local residents as well as being perceived in a bad light abroad", Thaksin, quoted in "Thaksin pledges restraint in use of decree", *The Nation*, 17 July 2005.

³ "Kansonthana phiset ruang kansang santisuk nai 3 jangwat chai daen pak tai" ["Special discussion on peace-building in the three southern border provinces"], 28 July 2005, broadcast live from Government House at 8:35 p.m. on TV Channel 11.

⁴ See Crisis Group Report, *Insurgency, Not Jihad*, op. cit., p. 7. This remains true of the present generation. A member of a separatist youth group in Pattani said he and some of his peers joined due to anger over police brutality. Crisis Group interview, April 2005. Police interrogations of separatists reveal similar motivations. Interrogation depositions viewed by Crisis Group.

⁵ This leaflet was found on 15 September 2005 by the charred body of a former army ranger and the remains of a burned Thai flag, "Militants kill two, threaten more mayhem", *Bangkok Post*, 16 September 2005.

To tackle the real security threat posed by separatist militants in the south, the government needs to win back community trust. Repealing and amending some of the decree's most egregious provisions would assist this effort. There are also measures the armed forces could take -- some are partially underway -- that would reassure locals. Finally, ensuring that staff of the newly-established legal aid centres in the three provinces gain unfettered access to detainees would help mitigate the risk of abuse of the new powers.

II. THE EMERGENCY DECREE

In response to growing national and international criticism of his government's heavy-handed approach, Prime Minister Thaksin changed tack after his re-election in February 2005. Political observers also highlighted the subtle but increasing pressure from the Thai monarch as a key factor. In a rare intervention, King Bhumidol summoned Thaksin to the palace on 1 November 2004 to advise him in a private meeting to handle the troubled region "with care".⁶ Then on 16 November 2004, in a speech before hundreds of senior police and military officers and broadcast live on national radio, the King criticised the government's mishandling of the conflict. He warned that if the security forces did not adopt softer tactics and "manage the situation properly", the nation might "fall into ruin".⁷

Several privy councillors openly criticised the government's approach after the February election, including General Surayud Chulanont, who said, after a visit to the region with the Crown Prince, Maha Vajiralongkorn, "this long-standing and bitter problem has become chronic. If this wound is not treated properly, it will grow to become a malignant tumour that cannot be cured".⁸

Having won an impressive majority everywhere but in the south, the prime minister chose his inauguration speech on 9 March 2005 to proclaim a new determination in his second term to uphold human rights and explore peaceful means for ending the southern violence.⁹ He then called a

⁶ Crisis Group interviews with NRC members and academics in Bangkok and Pattani, April, September 2005. See also Duncan McCargo, "Thaksin and the resurgence of violence in the Thai South", *Critical Asian Studies*, forthcoming (March 2006).

⁷ "Advice from on high", *Time Asia*, 22 November 2004.

⁸ "Surayud warns of full-scale rebel uprising", *The Nation*, 22 February 2005. The chair of the Privy Council and former prime minister General Prem Tinsulanonda, and Councillor Dr Kasem Wattanachai also spoke out against the government's approach at a seminar on 28 February. "Southern Conflict: PM should 'adopt Royal approach'", *The Nation*, 1 March 2005.

⁹ "Mai chai seang kangmak nai thang thi phit kamman maew nun enchi-o sithimanutsayachon" ["Thaksin promises not to abuse his parliamentary majority; vows to support NGOs and human rights"], *Matichon*, 10 March 2005, p. 13; "Thaksin assumes power: I shall uphold human rights", *The Nation*, 10 March 2005. His failure to resolve the conflict in the southern provinces was starkly illustrated by the 6 February 2005 election. Despite winning an overwhelming majority nationwide, Thaksin's Thai Rak Thai party captured no seats in the three southernmost provinces and lost almost all those it had gained in the south in 2001. Of 54 seats in the fourteen southern provinces, Thai Rak

joint parliamentary hearing on the south at which he admitted the military approach was not working, said he was "determined to undo what I've done wrong" and solicited the advice of opposition politicians.¹⁰

The centrepiece of the new approach had already been put in place with establishment of the independent NRC to devise a peaceful solution. In late February, Thaksin appointed a former prime minister, Anand Panyarachun, to head it, and by April the 48-member panel was meeting fortnightly and consulting regularly with southern community and religious leaders. One of its first moves was to urge the government to revoke martial law, in effect in the south since 5 January 2004, arguing it was unnecessary and had a negative psychological impact on residents. In fact, Thaksin had already appointed experts in late 2004 to explore alternatives.¹¹

The decree was an attempt to strike a balance between tough security measures and enhanced legal protections. It does offer some safeguards and transfers overall control from military to civilian officials but the wide-ranging powers bestowed on the prime minister and "competent officials" he designates are often vaguely defined, with few provisions for parliamentary or judicial oversight.¹²

Section 17, granting enforcement officers immunity from criminal and civil prosecution, was specifically requested by the military in response to the investigative commissions into its handling of the Krue Se mosque raid and the Tak Bai protest in April and October 2004.¹³ Combined with Section 16, which suspends jurisdiction

of the administrative courts to prosecute human rights violations by officials, citizens are left with no redress for abuses of the emergency powers. As a petition by Thammasat University academics argues, the effect is to "completely destroy accountability".¹⁴

The decree does contain some additional legal protections. For example, under martial law soldiers and police were empowered to arrest and detain suspects without a court warrant and for up to seven days without charge. Now soldiers must obtain consent from a police officer and a civilian district official before applying for an arrest warrant from a judge.¹⁵ However, grounds for detention are broadly defined -- even a suspected sympathiser can be arrested and detained for up to 30 days without charge if an enforcement officer deems it "necessary to prevent such person from committing an act or participating in the commission of any act which may cause a serious situation, or to engender cooperation in the termination of the serious situation".¹⁶

Moreover, the conditions of detention are not subject to protections normally guaranteed under the constitution. Particularly problematic elements include a stipulation in Section 12 that police hold suspects in "places other than a police station, detention centre, penal institution or prison". Irregular places of detention where standardised procedures and safeguards are not in place heighten the risk of abuses -- and in a region where mistreatment and torture of detainees has been relatively common, this danger is particularly acute.¹⁷

Section 12 also stipulates that suspects "shall not be treated as convict[s]".¹⁸ If detainees are not accorded normal "convict" status, the associated legal protections such as immediate access to a lawyer of their choice and the right to inform their families of their detention are

Thai won one, in the tsunami-affected Phang Na province; the opposition Democrats took 52, and the Chart Thai party one.

¹⁰ Prime Minister Thaksin at 30-31 March 2005 joint session on the south. "Thaksin phing samannachan rap phit prom kaekhai so wo fai kan obrom lom ceo lerk kohok ["Thaksin champions reconciliation, admits wrongdoing and readiness to right wrongs; Senators and opposition call for the CEO to be stopped"], *Thaipost*, 31 March 2005, p. 13; "PM admits action in South flawed", *Bangkok Post*, 31 March 2005.

¹¹ Crisis Group interviews with Thai academics and National Reconciliation Commissioners, April, September 2005. Deputy Prime Minister Wissanu Krea-ngam, who headed the drafting team, said in September, two months after the decree was introduced, that the government had been examining options since 2004. "Emergency Decree: PM takes absolute power", *The Nation*, 16 September 2005.

¹² See International Commission of Jurists, "More power, less accountability: Thailand's New Emergency Decree", August 2005.

¹³ Deputy Prime Minister Wissanu Krua-ngam revealed this at a press conference in Bangkok on 19 July 2005, the day the prime minister declared the state of emergency in the three provinces. On the Krue Se and Tak Bai incidents and subsequent investigative commissions, see Crisis Group Report, *Insurgency, Not Jihad*, op. cit.

¹⁴ "Kanachan mo tho khan pho ro ko chukchern chi sum fai tai sang khwam watklua" ["Thammasat university academics oppose emergency decree, pointing out that it inflames violence and creates fear"], *Matichon*, 21 July 2005, p. 2.

¹⁵ As under martial law, suspects may be held for seven days, after which, the competent official must either lay a charge or apply for an additional warrant (with a maximum period of 30 days for detention without charge).

¹⁶ Section 11 (1) of the decree, op. cit.

¹⁷ Section 12 of the decree, op. cit. As the International Commission of Jurists recommends, the law should reaffirm that detainees' basic rights will be guaranteed, "More power, less accountability", op. cit., p. ii.

¹⁸ Section 12 of the decree, op. cit. The NRC also called for the government to affirm explicitly the right of detainees to a lawyer within 48 hours. "Pherd 14 khosaner ko or so lod khwam runreang changwat chaidan tai" ["Fourteen suggestions of the NRC to reduce violence in the southern border provinces"], reproduced in *Krungthep Turakit*, and *Matichon* newspapers on 27 July 2005.

jeopardised. Suspects detained under Section 12 in relation to the Tanyong Limoh killings, for example, have reportedly been denied access to their lawyers.¹⁹

III. THE IMPACT OF THE DECREE

Prime Minister Thaksin announced enactment of the decree on 15 July 2005, presenting it as a response to the coordinated attacks on Yala city the previous day. Although officials had been drafting the document for months and had hinted that martial law would soon be replaced, few anticipated the sudden enactment of an executive decree with immediate effect.²⁰ Deputy Prime Minister Wissanu Krua-ngam explained that "the Yala incident was the last straw". The coordinated attacks -- the first of that magnitude in a major urban centre -- "came as a rude awakening...the[y] prompted the government to take the decree off the shelf".²¹

A. THE NRC

Many senior officials, however, were not aware the draft decree was already prepared. Some members of the NRC were so shocked by the announcement that they declared their intentions to resign. Commissioners from the southern provinces were most angered by the failure to consult or even inform the body of the decree before enacting it, but the NRC as a whole was stunned.²²

Chairman Anand convened a small NRC working group on 18 July to prepare a response and met Thaksin the same day to express the collective dismay. During this meeting, he persuaded the prime minister to suspend some of the most draconian elements, including the emergency measures laid out in Section 9, which would have allowed the government to censor the media and

¹⁹ A number of suspects detained in connection with the Tanyong Limoh killings were initially denied access to their lawyers, some for as long as ten days. A defence lawyer explained that "the police don't want them to have access to lawyers as they are afraid that the suspects will refuse to give testimony which they need for the case". Crisis Group phone interview with member of Muslim Lawyers Association; "Suspects being denied legal aid: lawyers", *The Nation*, 30 September 2005. Police routinely deny access to lawyers for several days in southern Thailand on this rationale. Dozens detained in connection with the Tak Bai protest in October 2004, for example (before the decree came into force), were denied access to their lawyers and pressured by police and local government officials to confess to crimes they claim they had not committed, on the basis that they would receive lighter sentences. Crisis Group interview with defence lawyer for the 59 protestors charged with illegal assembly, destruction of public property and possession of unlicensed weapons, Narathiwat, April 2005.

²⁰ The decree was approved by the cabinet on 16 July 2005 and immediately forwarded to the King for royal assent. Although Thaksin had not initially intended to submit the decree to parliamentary scrutiny, both the Thai-Rak-Thai dominated House (on 24 August) and Senate (29 August) approved it some six weeks later.

²¹ The decree had been drafted some time earlier. The government had been waiting for the appropriate moment to issue it. "Ork pho ro ko chukchern tit dab nayok amnat lonfa chapkum prappram prapmob dakfang khumsue" ["Issuing a new decree gives PM absolute power to arrest, repress protest, tap phones and control media"], *Matichon*, 16 July 2005, p. 14; "Security powers to get boost", *The Bangkok Post*, 16 September 2005. On 14 July, an estimated 60 insurgents carried out coordinated attacks on Yala city, detonating five bombs in close succession, including one at a power station that blacked out the city for over an hour. In the darkness, militants fired on police, killing one. An insurgent was also killed in the gunfight. Spikes were placed on roads all over the city to slow security forces' response.

²² Crisis Group interviews with Commissioners, Bangkok, Pattani, Yala and Narathiwat, September 2005.

personal correspondence and prohibit public gatherings at any time or place. Thaksin also agreed to suspend Articles 4 and 5 of Section 11, empowering officials to tap telephones, prevent communication between individuals, and prevent people from leaving the Kingdom,²³ and Article 6 of Section 11, which would grant the state almost limitless state power over the south.²⁴

As Senator Kraisaak Choonnavan pointed out, however, "[t]he decree empowers the prime minister to apply any of the measures he sees fit. There is no guarantee he would not use the measures that he omitted...at a more appropriate time."²⁵ Senator Nirun Pitukwatchara added, "I'm uncertain whether the government has changed its mind on some issues or whether it's insincere and will eventually enforce the entire decree".²⁶

At a special meeting of the whole National Reconciliation Commission on 19 July, the same day the cabinet approved the decree, Chairman Anand convinced all NRC members to stay the course, but most commissioners, including Anand, expressed frustration and disappointment with both the decree and the manner in which it was enacted.²⁷ One described it as "a depressing indicator of the government's commitment to peaceful resolution of the conflict".²⁸

The NRC released an official statement on 25 July condemning the decree, claiming it demonstrated the government's retreat to the old security-first framework, and stating that "not only will it not solve the problem, it will fan the flames of violence".²⁹ The statement expressed concern that the commission's task of reconciliation would be much more difficult.

Although the NRC has vowed to complete its report, the decree had what one commissioner described as "a very damaging psychological impact".³⁰ Several members said that before its enactment they would have been willing to continue to advise the government after presenting their final report but now had no faith the prime minister would heed outside advice. One said, "the NRC has given up. If Anand can't do it, nobody can".³¹

When it was first established, Prime Minister Thaksin insisted the NRC would be completely independent, and the government "will give it anything it wants and endorse all its proposals, no questions asked".³² On 29 September he said the government would not implement recommendations that conflict with security policy. "If they are good and useful for the nation and people, we will immediately comply with them. But if there are any recommendations against the national security policy, we will be unable to follow them".³³

The NRC is the only government-linked body to have consulted extensively with local Malay Muslim community leaders.³⁴ It will present the results of these in-depth consultations and policy recommendations flowing from them to the government in its final report in early 2006.³⁵ The government should consider all the recommendations carefully, including any that would entail a rethink of some elements of security policy.

B. NATIONAL POLITICS

Bypassing the parliament by issuing an executive decree rather than seeking legislation was bound to provoke an angry reaction from parliamentarians, but opposition politicians, academics and human rights advocates were

²³ Notes of interview with NRC member made available to Crisis Group.

²⁴ Section 11 (6) authorises the prime minister, with cabinet approval, to order "the prohibition of any act, or any instruction to perform an act [deemed] necessary for maintaining the security of the state, the safety of the country or the safety of the people". This was highlighted by the International Commission of Jurists as an example of the vague definitions and sweeping powers of the decree in "*More Power, Less Accountability*", op. cit.

²⁵ "Ombudsmen petitioned over decree", *Bangkok Post*, 21 July 2005.

²⁶ "Decree a silent coup, public unaware of dangers -- legal experts", *The Nation*, 20 July 2005.

²⁷ Crisis Group interview with Chaiwat Satha-Anand, commissioner present at 18 and 19 July meetings, Bangkok, 15 September 2005.

²⁸ Crisis Group interview, September 2005.

²⁹ NRC statement on the Emergency Decree, "Pherd 14 khosaner ko or so lod khwam runreang changwat chaidaeen tai" ["Fourteen suggestions of the NRC to reduce violence in the southern border provinces"], reproduced in *Krungthep Turakit*, and *Matichon* newspapers, 27 July 2005.

³⁰ Crisis Group interview with NRC member and chairman of the Narathiwat Islamic Council, Imam Abdulrahman Abdulsamad, Narathiwat, 7 September 2005.

³¹ Crisis Group interview, October 2005.

³² Prime Minister Thaksin's remarks in the joint parliamentary hearing on 30 March. "PM admits action in South flawed", *Bangkok Post*, 31 March 2005.

³³ "Not all NRC advice may be approved", *Bangkok Post*, 30 September 2005.

³⁴ The NRC and its working groups have consulted weekly with local community leaders on a wide range of policy matters, as well as conducting surveys and focus group discussions on particular issues. Crisis Group interviews with members of the NRC working groups, Pattani, Narathiwat, Yala, Bangkok, September 2005.

³⁵ The NRC presented a 77-page summary of its draft report to the government on 25 October 2005, the anniversary of the Tak Bai protest. "State losing ability to safeguard citizens", Isara News Centre, 26 October 2005.

also genuinely concerned about its content.³⁶ The National Human Rights Commission (NHRC) condemned the decree within 24 hours, calling on the prime minister to repeal it. The statement argued that the decree endangered human rights, and "the harsh measures [it] authorise[s] will worsen the situation because it grants officials excessive powers. Abusive officials are the major cause of violence in the deep South".³⁷

This concern was echoed in the 20 July statement of twenty academics from Thammasat University's Faculty of Political Science, which argued that "[t]his law does not solve the problem of abuse of power but exacerbates it", and expressed fear it would worsen the crisis in the south with long-term consequences.³⁸

Opposition parliamentarians pushed for an extraordinary session to debate the decree, which eventually took place on 24 August for the House of Representatives and 25-26 August for the Senate.³⁹ The government promised to consider any amendments proposed by the parliament.⁴⁰ During the House debate, opposition leader, Abhisit Vejjajiva argued the decree violated the spirit of the constitution and opened the way for abuses of power by authorities. The Democrat Party's deputy secretary general accused the government of perpetuating a culture of impunity, turning a blind eye to abductions and extrajudicial killings.⁴¹

Several senators also expressed reservations but Thaksin's Thai Rak Thai party's large majority ensured that both houses of parliament ratified the decree, unamended.⁴² As well as party discipline, which was enforced scrupulously, parliamentarians were likely responding to popular sentiment. Thais outside the south, with the exception of intellectual elites and human rights advocates,

overwhelmingly support the decree. A July poll showed 72 per cent of respondents backing it.⁴³

C. THE SECURITY FORCES

Commissioned military officers and senior police were given from two days to a week's training in their new rights and responsibilities.⁴⁴ In terms of day-to-day work, the major impact on the ground seems to be the requirement to seek consent of civilian officials and judges to obtain warrants. Most officers interviewed by Crisis Group feel this gives them less room for manoeuvre but appreciate that the government wants to introduce legal changes to improve the image of the forces. Many said that in practice there is little difference. When asked what he thought the main differences were with martial law, one quipped, "the name".⁴⁵

The powers of enforcement officers are similar to what they were under martial law, only with less accountability. Experience has shown that concentrating power in the hands of the security forces has not been effective in tackling separatist violence. In response to the January 2004 coordinated attacks that marked the beginning of this round of the conflict, Prime Minister Thaksin imposed martial law throughout Narathiwat, Yala and Pattani.⁴⁶ During eighteen months, violence steadily escalated, and the security forces came no closer to learning who was directing the attacks, let alone preventing them. Police were unable to make arrests, or even identify perpetrators, in over 85 per cent of violent incidents.⁴⁷

³⁶ Bangkok Senator Sak Kosaengruang, for example, complained that the decree bypassed the legislative and judicial branches and even the administrative and military courts, *Matichon*, 27 August 2005.

³⁷ National Human Rights Commission statement, 19 July 2005, see www.nhrc.co.th.

³⁸ "Kanachan mo tho khan pho ro ko chukchern chi sum fai tai sang khwam watklua" ["Thammasat university academics oppose emergency decree, pointing out that it inflames violence and creates fear"], *Matichon*, 21 July 2005, p. 2.

³⁹ A coalition led by the Confederation for Democracy including Labour Solidarity, the State Enterprise Labour Relations Confederation and the Students Federation of Thailand submitted a petition to the parliament calling for the decree's repeal. "Civic groups file petition against decree", *Bangkok Post*, 23 August 2005.

⁴⁰ "Government will listen to parliament", *Bangkok Post*, 1 August 2005.

⁴¹ "State of Emergency: Abhisit lashes out at government", *The Nation*, 24 August 2005.

⁴² Thai Rak Thai holds 377 of the parliament's 500 seats.

⁴³ Reported in *The Nation*, "Move shows a failure to learn from past mistakes", 21 July 2005. The poll was conducted by the Assumption Business Administration College (ABAC) polling research centre, attached to Assumption University. The methodology of this particular poll is debatable, but its findings are broadly reflective of popular sentiment outside the south, as reflected in reporting in popular print and particularly broadcast media.

⁴⁴ Crisis Group interview with police and military officials including Southern Border Provinces Peace Building Command spokesman, Col. Somkuan Saengpataranet, and Ninth Region deputy police commissioner, Tanee Thawitsiri, Pattani, Narathiwat and Yala, September 2005.

⁴⁵ Crisis Group interview, Yala, September 2005.

⁴⁶ See Crisis Group Report, *Insurgency, Not Jihad*, op. cit.

⁴⁷ Statistics compiled by a working group of the NRC cited by the NRC director of research, Chaiwat Satha-Anand, Crisis Group interview, Bangkok, 15 September 2005. Fourth Army director, Lt. Gen. Kwanchart, announced in October 2005 that in 2004 there were 3,027 violent incidents in Pattani, Yala, Narathiwat and Songkhla provinces. He said 867 were security-related. Authorities arrested 114 suspects. In 2005, there have been 3,300 violent incidents in the region, of which 1,017 were

Clearly it is not lack of executive power that is hampering security forces; intelligence collection remains very weak. And excessive use of force under martial law, compounded by lack of accountability, arguably made this task more difficult by discouraging the public from offering information to authorities.⁴⁸

D. RESIDENTS OF THE SOUTHERN PROVINCES

The impact on villagers in the affected provinces of Pattani, Narathiwat and Yala has been mixed. In recent months, the security forces have focused operations on areas they identify as separatist strongholds ("red zones") and areas where militants have sought shelter ("yellow zones"), while seeking to demilitarise less violence-prone areas ("green zones").⁴⁹

Most villagers know little about the details of the decree but many are aware that it empowers police and soldiers to arrest and detain without charge, and any abuses committed by officials will go unpunished. Villagers in Chanae, Cho Airong and Sungai Padi districts said local officials had drawn up blacklists of suspects, and military officers came to the homes of those suspects and instructed them to surrender or face arrest. Several also alleged extra-judicial executions by government agents.

Many similar cases have been reported to the Muslim Lawyers Association, making its members targets for intimidation and harassment.⁵⁰ And there are doubtless scores of villagers who are too scared to make reports to anyone.⁵¹ The climate of fear in these districts of Narathiwat in particular, but also in Pattani's Yaring

district and other "red zones", is palpably worse than it was under martial law. In "green zones", however, the military has dismantled and stopped manning many checkpoints, at least during daylight, and the atmosphere is more relaxed. This report focuses on the impact in the "red zones".

1. Blacklists

Many government and military officials publicly deny blacklists have been drawn up.⁵² Several privately admitted to Crisis Group, however, that they are in use, often relying on weak intelligence and containing names of innocent people.⁵³ Suspects are instructed to "voluntarily surrender" or face arrest or worse.⁵⁴ Headmen in several Sungai Padi villages said they had been presented with lists and asked to round up suspects. The lists have given rise to accusations of informing, creating conflict within villages.⁵⁵

Narathiwat government officials have with some success attempted to replicate an initiative of Pari village head Usman Tahey. Without a formal amnesty in place, Tahey encouraged members and sympathisers of separatist groups to report to authorities to clear their names and enter a voluntary rehabilitation program. Those who committed crimes beyond membership of an illegal organisation were promised leniency if they surrendered. Replication of this program has been successful in some cases, but in many others, it has been hijacked by local officials hoping to score political points.

Residents of two Sungai Padi villages said soldiers in full combat gear patrolled their villages daily, knocking on the

related to the unrest, and 126 suspects arrested. "Two police killed in rail bomb blast", *Bangkok Post*, October 2005.

⁴⁸ See Crisis Group Report, *Insurgency, Not Jihad*, op. cit.

⁴⁹ In late September 2005 the army reported there were 312 red zone villages in Narathiwat in the nine districts of Sri Sakhon, Chanae, Rangae, Yi-ngor, Rusoh, Sungai Padi, Sukhirin, Cho Airong and Bacho, 129 green zones and 133 yellow zones. "Village is a 'red zone'", *The Nation*, 21 September 2005.

⁵⁰ Crisis Group interviews, Narathiwat and Bangkok, September 2005. The chair of the Muslim Lawyers Association, Somchai Neelaphajit, disappeared in March 2004 after publicising allegations of police torture. He is presumed dead, and the prime suspects are police officers. A police source confided to Crisis Group that the Muslim Lawyers Association, as well as a community medical clinic run by Dr Waemahadi Waedo recently acquitted of involvement in a Jemaah Islamiyah bomb plot, were singled out in a police training exercise. The training officer asked, "when a terrorist needs medical treatment, where does he go? When a terrorist needs a lawyer, to whom does he turn?", and named the two institutions.

⁵¹ Soldiers reportedly explicitly warned residents of a Narathiwat village against talking to journalists. Crisis Group interview, September 2005.

⁵² Narathiwat Governor, Pracha Therat denied use of blacklists, as did the Southern Border Provinces Peace Building Command spokesman, Col Somkuan Saengpataranet, when interviewed by Crisis Group (Narathiwat and Yala respectively) in September 2005. Deputy Prime Minister Chidchai also denies blacklists. "Thai deputy PM denies blacklisting of southern youths", *Bernama*, 12 October 2005.

⁵³ A senior police officer and several military officials said blacklists are used; some admitted that people are often wrongly included due to assumptions about their school or village. A senior army officer involved in receiving "surrenderers", said he believed several people blacklisted and sent to him for rehabilitation were innocent. See also "Innocents `forced to surrender'", *Bangkok Post*, 15 September 2005; "4,000 teenagers blacklisted", *Bangkok Post*, 11 October.

⁵⁴ Crisis Group interviews with residents of several villages in Sungai Padi district, human rights defenders and members of the NRC, September 2005.

⁵⁵ Members of the Southern Border Provinces Peace Building Command's work scheme, colloquially known as the 4,500 scheme (the monthly salary in baht), are widely suspected to be the main informers, which has led to conflicts within villages. Crisis Group interviews, Narathiwat and Pattani, September 2005.

doors of blacklisted suspects and threatening them if they refused to "voluntarily surrender".⁵⁶ Others reported officers coming to their villages and announcing that blacklisted people were living there, they knew who they were and they should "voluntarily surrender" or face the consequences, but without naming individuals let alone accusing them of specific crimes. Some blacklisted villagers have reported to the authorities; others -- including many who insist they are innocent but fearful -- have gone into hiding.⁵⁷

The most recent precedent for blacklists in Thailand is Prime Minister Thaksin's 2003 war on drugs, in which 2,275 people were killed and hundreds arbitrarily arrested and "disappeared".⁵⁸ As a border region with a reputation for drug-smuggling, the southern provinces were one of the hardest hit areas, and the memory is fresh. None of the disappearances were investigated -- and that was before officers were officially immune from prosecution.

2. Allegations of extra judicial killings

Local community leaders and human rights groups have received dozens of reports of extra-judicial killings and disappearances since the decree was enacted but are too afraid of the consequences to their own staffs and the villagers who made the reports to pursue investigations. Persistent rumours in village teashops and mosques, regardless of their accuracy, are having a profound psychological impact on Malay Muslim communities. Separatist militants have certainly been responsible for a substantial proportion of the anonymous drive-by shootings, increasingly targeting Muslim civilians suspected of informing,⁵⁹ but most locals' first assumption in the absence of conclusive proof is that the gunmen are members or agents of the security forces.

The incidents discussed below demonstrate the depth of fear and suspicion in the red zones.

⁵⁶ Crisis Group interviews, Narathiwat, September 2005.

⁵⁷ Crisis Group interviews with residents of several villages in Sungai Padi district, September 2005, and with local human rights defenders and members of a NRC working group to whom blacklist harassment had been reported.

⁵⁸ Estimates range upwards of 3,000, but the government's own figures are that more than 2,000 were killed and 51,000 arrested between February and August 2003. Human Rights Watch, "Not enough graves: The war on drugs, HIV/AIDS, and violations of human rights in Thailand", July 2004.

⁵⁹ For example, Luteng Arwarebueza, a former separatist in Bo-Ngo village in Rangae, Narathiwat, had turned himself in to authorities in June 2005 and was working with the government. During the night of 15-16 November, insurgents attacked his house with AK rifles and grenades, killing him, his wife and seven children while they slept. See "Narathiwat Slaughter: Family of nine gunned down", *The Nation*, 17 September 2005. Crisis Group interviews with security officials and members of separatist groups have confirmed the practice.

IV. THE DEATH OF IMAM SATOPA

On 29 August 2005, Satopa Yusoh, the imam of Lahan village in Narathiwat's Sungai Padi district, was gunned down in front of his home by unidentified killers. He was returning from the village mosque after leading the fifth daily prayer (approximately 8:20 p.m.). As he dismounted his motorcycle to climb the stairs, gunmen shot at him from two directions with automatic rifles and then ran into nearby rubber plantations.⁶⁰

Some villagers claim to have witnessed four men in military-style clothing fleeing the scene.⁶¹ Officials argue that either disgruntled locals or separatist militants killed the imam in an attempt to turn villagers against the government.⁶² Citing distrust of the authorities, almost 100 residents, mostly women and children, created a human barricade to prevent officials from entering the village. In accordance with Muslim rites, the imam was buried within 24 hours and no autopsy performed. No physical evidence such as shell casings was collected.

Locals and officials believe different versions of events. Neither can be proven but what is clear is the total disintegration of trust between the community and the government.

A. THE EXTRA-JUDICIAL KILLING THEORY

Crisis Group interviewed several residents, including the imam's son. All were convinced he was killed by soldiers. Conspiracy theories are rife in the south, and distrust of authorities runs deep, but if these claims were true, they would constitute compelling circumstantial evidence. There is no way to verify the assertions without a forensic investigation and formal witness statements, both of which are unlikely in the current climate.

Lahan locals said that on 29 August, several hours before the imam was killed, military helicopters were circling

⁶⁰ There are reportedly more than twenty bullet holes in the stairs of the imam's house. "Yuean muban Lahan thi sueng mai tongkan amnat rat" ["Visiting Lahan village where state authorities are not welcome"], Isara News Centre, republished in *Matichon*, 7 September 2005, p. 2.

⁶¹ Villagers said that although there were no eye witnesses to the shooting other than the imam himself, several villagers saw four men in military-style dress (combat-style trousers and t-shirts) fleeing the scene. Crisis Group was not able to interview these witnesses. Interviews with villagers, Lahan, Sungai Padi, Narathiwat, 6, 12 September 2005.

⁶² "Insurgents surrender in Narathiwat; killings continue", *The Nation*, 31 August, 2005; "Village turns to no-go zone for authorities", *Bangkok Post*, 2 September 2005.

above the village.⁶³ Senior Fourth Army officers categorically deny this.⁶⁴ There were no eyewitnesses to the incident. After the gunfire stopped, the imam's family and neighbours ran out of houses to find Imam Satopa slumped on the ground, shot several times. His family helped him into the house. Although critically injured, with wounds in his calf, thigh, back, side, shoulder and forearm, he lived for several hours. He allegedly told his family that four soldiers had shot him then run away. He said he did not want an ambulance, for fear the security forces would take him from the hospital; he wanted to die in his home.⁶⁵

Around half an hour after the shooting, however, an ambulance under heavy military escort (locals claimed more than ten trucks of soldiers) arrived. "In accordance with the imam's wishes, none of us called an ambulance", said one villager. "How could they have known someone had been shot if it wasn't them [the military] or their agents?"⁶⁶

B. THE OFFICIAL EXPLANATION

Military and provincial officials stated that locals, possibly separatist rebels, had killed the imam then convinced villagers it was the work of the military to turn them against the authorities. A senior intelligence official said that two of his informers in the village had witnessed the killing. According to this version, there were two, not four, assassins, and they were wearing sarongs, not military-style clothing.⁶⁷ However, police have not made any arrests in connection with the shooting, announced any suspects

⁶³ Crisis Group interviews with villagers, Lahan, Sungai Padi, Narathiwat, 6, 12 September 2005.

⁶⁴ Crisis Group interviews with Col. Somkuan Saengpatanet, Southern Border Provinces Peace Building Command HQ, Yala, 13 September, and Col. Duangkamol Makeswat, director of the Fourth Region Armed Forces Security Centre, Bangkok, 16 September 2005.

⁶⁵ Crisis Group interviews, Imam Satopa's son, Lahan village, 6 September 2005, and other villagers on 11-12 September.

⁶⁶ Crisis Group interview, Lahan village, 6 September 2005. Of course there are a number of ways authorities could have been alerted (through informers, residents of a neighbouring village who heard the gunshots, or Lahan locals who later denied it, for example), but Lahan residents interviewed by Crisis Group seemed convinced this proved military involvement. Women in the village separately told reporters that before the imam died, "soldiers frequently came to his house and gave him medicines. After he was shot, an ambulance came to the village immediately as if it had already been prepared", "Yuean muban Lahan thi sueng mai tongkan amnat rat" ["Visiting Lahan village where state authorities are not welcome"], Isara News Centre, republished in *Matichon*, 7 September 2005, p. 2.

⁶⁷ Crisis Group interview with National Intelligence Agency official, Pattani, 11 September 2005.

or been able to investigate the crime scene. There is even a belief among some security officials that Imam Satopa is alive, in a hospital in Malaysia, but no evidence has been produced to back up this claim.⁶⁸

Narathiwat Governor Pracha Therat led a delegation of civilian and military officials to Lahan village on 4 September to meet the imam's family. It was met by a blockade of women and children chanting, "our village does not welcome officials who mistreat the people".⁶⁹ Through local mediators, Governor Pracha finally negotiated entry and met the family in the mosque. The first question he posed was whether the family had completed the haj pilgrimage. If not, he said, the government would pay for them to do so. Although the governor was no doubt motivated by a desire to help the distressed family, many locals saw this offer of compensation as an admission of guilt, or even hush money.⁷⁰

C. POSSIBLE MOTIVES

Army officers had visited Imam Satopa regularly in the month before he was assassinated. Villagers claimed not to know what they discussed. Military sources state they had been seeking his assistance in facilitating surrenders of separatist suspects in the village.⁷¹ Lahan residents claimed that soldiers had in fact visited several houses in Lahan and the surrounding area in the previous month, saying there were blacklisted people in the village, and they should report to the authorities.⁷² A police official said the imam was on a blacklist.⁷³ It is possible the security forces suspected he was a separatist leader, providing a motive to execute him. There is no hard evidence, however, of military or police involvement.

If separatist groups were active in the village, as the authorities claim, there are two possible motives for rebels to have killed the imam. They might have wanted to win support from locals by painting the military as murderers. The second possibility is that the imam was

working with the authorities, or considering working with them, to engineer surrenders.

Finally, it is possible the killing had nothing to do with politics but rather a personal dispute. In the absence of a formal, professional investigation, with cooperation from residents, the killers are unlikely to be identified.

D. SIGNIFICANCE

The mysterious murder was not exceptional or unusual in southern Thailand. The overwhelming majority of reported violent incidents since January 2004 have not been resolved. What was new and alarming was the inability of authorities even to attempt an investigation. Trust has been so badly eroded, particularly in the wake of the emergency decree, that villagers would not cooperate.⁷⁴ Refusing to allow police access to a crime scene is a brazen challenge to state authority.⁷⁵

Security officials were placed in a difficult position, with the memory of Tak Bai fresh in their minds and in the minds of people far beyond Narathiwat. To enter the village forcibly would have been disastrous. To walk away would simply add another murder to the growing list of unsolved cases.

Government inability to stem the violence, combined with widespread local suspicion that security forces are behind some of the killings, continues to exacerbate tensions. Since the Lahan incident, two Buddhists have been killed in a nearby district, and leaflets left by the bodies claimed them as revenge for the imam's death.⁷⁶

⁶⁸ Crisis Group telephone interview, October 2005.

⁶⁹ "Villagers vent anger against governor", *Bangkok Post*, 5 September 2005.

⁷⁰ Crisis Group interviews with Lahan villagers, 6, 11 September 2005.

⁷¹ Crisis Group interviews, Narathiwat, Yala, Pattani, September 2005.

⁷² Villagers said they would have been willing to report to the authorities to clear their names, but since no one had been accused of a specific crime, they were not sure how to proceed. Crisis Group interviews with villagers in Lahan, 6 September 2005.

⁷³ Crisis Group interview, 5 September 2005.

⁷⁴ Residents of several Narathiwat villages, including Lahan, said in early September 2005 they were more fearful since the emergency decree. The overwhelming majority were unfamiliar with its details but acutely aware of one section in particular: Section 17, which grants competent officials immunity from prosecution for any action taken in the line of duty. Crisis Group interviews, 5-14 September 2005.

⁷⁵ It is possible, although there is no evidence, that separatist militants engineered the human barricade, or instructed Lahan residents not to cooperate with authorities; there is a deep reserve of genuine fear and mistrust that they could have capitalised on and manipulated.

⁷⁶ "Thais despair over growing insurgency", *International Herald Tribune*, 14 September 2005.

V. THE FLIGHT TO MALAYSIA

On 30 August 2005, the day after Imam Satopa's murder, 131 Malay Muslims fled Thailand to seek asylum over the border. Information on the precise reasons is not yet publicly available but there is some evidence to suggest the majority came from red zones in Sungai Padi and Sungai Kolok districts in Narathiwat fearing persecution.⁷⁷ It is likely the flight was organised, possibly by people linked to separatist political or militant groups, but there is no evidence to date.⁷⁸

Two groups of asylum seekers arrived in Malaysia's north eastern border state of Kelantan on 30 August: 62 in Rantau Panjang, in Pasir Mas district and 69 in Pengkalan Kubor, in Tumpat district. Both initially sought refuge in mosques just over the border, in Masjid Al Hama in Pengkalan Kubor, and Masjid Hidayat in Rantau Panjang. Several hours after they arrived, Malaysian police escorted them from the mosques to an immigration holding centre in Tanah Merah, a town some twenty kilometres south, from where they were later transferred to a facility in neighbouring Trengganu state.⁷⁹

Thai government and military sources suggest the asylum seekers included separatists and their supporters, as well as ordinary villagers acting on rumours spread by separatists attempting to discredit the authorities.⁸⁰ Some who fled admit they were sought by authorities but feared unfair treatment. Some told of executions of other suspects (at least one claimed to be an eyewitness); others insisted they were innocent and feared arbitrary arrest and detention.

⁷⁷ Crisis Group was not able to interview the asylum seekers themselves -- only Thai and Malaysian officials and UNHCR have been granted access -- but analysts interviewed people in Kelantan who met the asylum seekers on arrival, as well as people in two of the villages from which they fled.

⁷⁸ Many more Thai Malay Muslims have fled across the border without formally claiming refugee status. A Thai Army commander in the border district of Sungai Padi and the chair of the Patani Malay Association in Kelantan independently estimated 1,000 for the period from the decree's enactment until mid-September. Crisis Group interviews, September 2005.

⁷⁹ This was designed to reassure the Thai government that the assessment of the group's refugee status applications would be politically neutral. The Kelantan state government is controlled by Malaysia's Parti Islam, which historically has been sympathetic to Thai Muslim separatist groups.

⁸⁰ Crisis Group interviews with southern government and security officials, including Narathiwat Governor Pracha Therat, and Southern Border Provinces Peace Building Command spokesman Col. Somkuan Saengpataranet, September 2005; "Thais: Separatist group behind Muslims fleeing to Malaysia", *Thais News/AP*, 8 September 2005.

While it is not possible to verify these claims, their fear was reportedly real.⁸¹

A. POSSIBLE MOTIVES

1. Fear of extra-judicial execution in Lahan

It is not yet clear whether Lahan residents fled after the killing of Imam Satopa. Most Thai officials insist the timing was coincidental, and that none of the 131 were from Lahan.⁸² Lahan villagers also said that none of their people had fled to Malaysia.⁸³ The Chairman of Narathiwat's Islamic Council, however, claimed to have received information that this did happen.⁸⁴

Some asylum seekers who fled to Pengkalan Kubor said their local imam had been shot dead by soldiers the previous week but claimed to be from a village near Sungai Kolok (Lahan is in Sungai Padi district). They and the villagers in Lahan may have lied about their origins to protect themselves or their families. It is also possible, however, that there was no direct link. Thai human rights defenders have received (unverified) reports of nine imams killed in mysterious circumstances since the emergency decree was enacted.⁸⁵

2. Fear of extra-judicial execution in Sungai Kolok

The Imam of Al Hama mosque in Pengkalan Kubor, just over the border from Tak Bai, described to Crisis Group the 69 Sungai Kolok residents who sought shelter in his mosque on 30 August:

People said they had come from Thailand, and they were terrified. They said they'd rather die than go back to Thailand. They thought there was a strong chance they'd be killed if they went back; they said they'd rather die in Malaysia.⁸⁶

⁸¹ Crisis Group interviews with people in Kelantan who saw the asylum seekers, and interviews with residents of villages from which they fled, September 2005.

⁸² Crisis Group interviews with southern police and military officers, September 2005; "Pulo gets the rap for 'refugees'", *Bangkok Post*, 8 September 2005.

⁸³ Crisis Group interviews with residents of Lahan village, 6, 12 September 2005.

⁸⁴ Crisis Group interview with Abdulrahman Abdulsamad, chair of Narathiwat Islamic Council, Narathiwat, 7 September 2005; "Southern Violence: KL shelters 'fleeing Muslims'", *The Nation*, 2 September 2005.

⁸⁵ Crisis Group correspondence, October 2005.

⁸⁶ Crisis Group interview with imam of Al Hama Mosque, Pengkalan Kubor, Tumpat, Kelantan, 13 September 2005.

Many were crying, but one elderly man in particular was reportedly especially distressed. As Malaysian police interviewed him, he cried and explained that as he and his nephew were leaving the mosque in their home village in Narathiwat the previous day, his nephew was shot by a soldier.⁸⁷ The old man said his nephew had been accused of being a separatist but never investigated or tried, simply executed. Others from the village told Malaysian police they had also been accused and fled for fear the same would happen to them.⁸⁸

3. Fear of arbitrary arrest or extra-judicial killing in To'deng, Sungai Padi

Five of the 131 reportedly fled from Ai Payong village in To'deng sub-district of Sungai Padi after learning they had been blacklisted.⁸⁹ To'deng has been classified as a red zone since violence surged in January 2004. It has seen dozens of incidents since then, including at least six locals shot dead by unidentified gunmen in Ai Payong and neighbouring Ai Batu villages.

In March 2004, To'deng's sub-district head (*kamnan*), Anuphong Panthachayangkul, was arrested. He confessed to helping organise the 4 January 2004 raid on the army camp in neighbouring Cho Airong district and named two Narathiwat parliamentarians and a Pattani senator as key instigators.⁹⁰ There were serious irregularities with the confession, however, including allegations of torture.⁹¹ It is not clear whether Anuphong implicated other local leaders but security forces conducted a sweep in the sub-district shortly after his arrest and took in another fourteen village heads and community leaders in To'deng, seemingly arbitrarily, some of whom were also allegedly

tortured.⁹² Subsequently, some 50 persons fled and have not been seen since. Some but not all were involved in separatist movements, according to local officials.⁹³ Others feared guilt by association.

The five who fled Ai Payong for Malaysia on 30 August were members of the same family, two daughters, two sons and the mother. Two months earlier, the father and another local man were shot dead as they left the mosque after *isyak* (evening) prayer. Shortly before, they had confided to the village head that they were members of a separatist group and said they feared soldiers were coming to kill them. They had earlier told villagers they were involved in a separatist movement but insisted they had not committed violence. None among the family who fled to Malaysia were known locally as involved in separatism but they had probably been blacklisted in connection with the husband/father. They saw what had happened to other suspects in the area and fled, fearing arrest, torture or worse.⁹⁴

4. Unemployment in Tabing, Sai Buri

Several officials, including Governor Pracha, dismissed the asylum seekers as job seekers.⁹⁵ A spokesman, Col. Acra Thiproj, claimed a significant proportion were from Tabing in Pattani's Sai Buri district. He did not specify the source of this information.⁹⁶ It seems unlikely, however, that job seekers would claim asylum, rather than simply crossing the border and looking for informal employment as hundreds of Thai Malay Muslims do each year.

⁸⁷ Crisis Group interview with imam present in mosque as police questioned the asylum seekers, Pengkalan Kubor, 13 September 2005. A local resident must have called the police, he explained. No one from the mosque had done so but the police arrived shortly after he found the group. Malaysian police questioned them inside the mosque between approximately 5:00 p.m. and 10:00 p.m., then took them to Tanah Merah.

⁸⁸ Interview with imam, al Hama Mosque, op. cit.

⁸⁹ Crisis Group interviews with police, Ai Payong village head, Narathiwat and Pattani, 9 September 2005; "Murdered cleric's village still tense", *Bangkok Post*, 7 September 2005.

⁹⁰ Anuphong named Narathiwat parliamentarians Najmiddin Umar and Aripheh Utrasin and Pattani Senator Den Toemeena. Najmuddin is currently on trial for treason. "Treason trial: Najmuddin insists he's innocent", *The Nation*, 5 October, 2005; "Impossible that Najmuddin is separatist: Wan Noor", *The Nation*, 7 October 2005.

⁹¹ A senior police official confided to Crisis Group, however, that Anuphong's confession had been extracted under torture. See Crisis Group Report, *Insurgency, Not Jihad*, op. cit., p. 20.

⁹² Crisis Group interview with Ai Payong village head, 9 September 2005.

⁹³ Thai authorities claim Hamzah Saud, former head of Ai Batu village for whom police have issued an arrest warrant (with a 500,000 Baht -- \$12,200 -- bounty) for involvement in the murder of Lt. Col. Sutham Sririkanont, is among the 131 and have requested his extradition. "Separatist insurgents 'among those who fled to Malaysia'", *Bangkok Post*, 22 October 2005; "Army says Thais number only 58 of 131 who crossed into Malaysia", *Bangkok Post*, 17 September 2005. After he was arrested and released in 2004, Hamzah fled. His replacement was shot dead within days. A villager who later asked Hamzah to surrender was also shot dead. There is no new village head in Ai Batu. Crisis Group interview with village head of neighbouring Ai Payong, Sungai Padi, 9 September 2005.

⁹⁴ Crisis Group interview with Ai Payong village head, Sungai Padi, 9 September 2005.

⁹⁵ Narathiwat Governor Pracha Thaeerat dismissed the majority of the 131 as job seekers in an interview with Crisis Group on 12 September, as well as several press interviews, for example, "You can't call them refugees", *New Straits Times*, 8 September 2005.

⁹⁶ "Army says Thais number only 58 of 131 who crossed into Malaysia", *Bangkok Post*, 17 September 2005.

B. GOVERNMENT AND MALAYSIAN RESPONSES

Prime Minister Thaksin dismissed the flight of the Muslims to Malaysia as a "dirty tactic" by insurgents attempting to "internationalise" the southern violence.⁹⁷ Foreign Ministry spokesman Sihasak Phuanketkeow, citing intelligence reports, claimed ten members of the Pattani United Liberation Organisation (PULO) had sparked the flight by spreading rumours in Malaysia about imminent violence in southern Thailand.⁹⁸

The Malaysian government announced on 1 September 2005 that it had offered temporary shelter to the 61 men, 21 women and 49 children in the immigration detention facility at Tanah Merah. Foreign Minister Syed Hamid Albar added that his government was concerned about the situation in the south and would prepare shelter for Thai Malay Muslims if it continued to deteriorate, but stressed that Malaysia would not "meddle in Thailand's domestic affairs".⁹⁹

After immigration authorities interviewed the asylum seekers, the office of the United Nations High Commissioner for Refugees (UNHCR) was allowed to assess the claims for refugee status. Malaysia's cooperation with UNHCR angered the Thai government, which saw it as interference in internal affairs. Politicians on both sides launched accusations through the media, and what might have been resolved through diplomacy escalated into a war of words, further fraying relations already strained over the separatist conflict in the southern border provinces, particularly since January 2004. Although Thai Malay Muslims regularly flee to Malaysia, and tens of thousands have become Malaysian citizens since Malaysian independence, this is the first time a major refugee issue has arisen. One recurring problem is the Thai claim that separatist leaders take refuge in northern Malaysia. Thailand has requested the extradition of dozens of suspects since violence surged in 2004 but Malaysia argues the 1911 treaty between Siam and Britain is no longer valid.

⁹⁷ "131 Muslims liphai pho ro ko" ["131 Muslims fled, fearing the decree"], *Thaipost*, 3 September 2005, p. 12; "UN to interview Muslims who fled", *Bangkok Post*, 6 September 2005.

⁹⁸ "Rat ang pulo chat chak liphai wangpaen nok prathet lok un maew tot muslim tai" ["Government claimed PULO instigated the flight. Plan the move outside the country to trick the United Nations. Thaksin blames southern Muslims"], *Thaipost*, 8 September 2005, p. 12; "PULO gets the rap for refugees", *Bangkok Post*, 8 September 2005.

⁹⁹ "Southern Violence: KL shelters 'fleeing Muslims'", *The Nation*, 2 September 2005.

Due to domestic political fallout over the alleged mistreatment of the suspects in Thai detention, Malaysia has been extremely reluctant to extradite Thai Muslims since an incident in 1998.¹⁰⁰ Malaysia's Special Branch arrested a Thai separatist leader, Cheku Mae Puteh, in January 2004 and detained him under the Internal Security Act. After receiving information through diplomatic channels, Prime Minister Thaksin demanded his extradition in a statement to the media. Bilateral relations have stumbled along since, with periodic flare-ups, but the problem of the 131 asylum seekers has taken the relationship to a new low.¹⁰¹

Thailand claims some of the asylum seekers belong to separatist groups and are wanted for crimes. An arrest warrant has been issued for one of these, Hamzah Saud, from Ai Batu village. Officials claim another ten are also separatist suspects, although no warrants have been issued.¹⁰²

Thaksin's response to UNHCR involvement was to attack both it and Malaysia. He told the UN General Assembly that "countries in the [ASEAN] community must be prepared to...hold consultations with each other and create a partnership based on trust and respect, and not on abuse and opportunism", and that UNHCR had allowed itself to be "trapped into local political exploitation", thus internationalising the issue.¹⁰³

On 7 September, the former Malaysian prime minister, Mahathir Mohamad, unhelpfully suggested, before the claims had been processed, that "if these people are real refugees, then we need to give them some asylum", prompting Thai Defence Minister Thamarak Isarangura to make a thinly veiled accusation that he sponsored meetings of Thai separatist groups.¹⁰⁴ Deputy Prime

¹⁰⁰ The last suspects to be extradited from Malaysia to Thailand were Abdul Rohman Bazo, Haji Daoh Thanam, Haji Mae Yala and Haji Sama-ae Thanam in January 1998, after Thailand threatened to suspend economic cooperation. See also Crisis Group Report, *Insurgency, not Jihad*, op. cit; "Surikat: Treaty still valid", *Bangkok Post*, 3 February 2005.

¹⁰¹ "Fresh barbs mar Thai-Malaysian relations", *The Nation*, 4 March 2005; "Regional perspective: Southern crisis -- Is there a way out?", *The Nation*, 3 October 2005.

¹⁰² "Thaksin: No meeting unless Malaysia hands over suspects", *Bangkok Post*, 31 October 2005; "Separatist insurgents 'among those who fled to Malaysia'", *Bangkok Post*, 22 October 2005.

¹⁰³ "Editorial: Thaksin shows his ignorance", *The Nation*, 16 September 2005; "Attack on UN agency: PM 'must back up his claim'", *The Nation*, 18 September 2005.

¹⁰⁴ Defence Minister Thamarak said that militants had held a meeting on an island (Langkawi) owned by Mahathir. "Songsum Langkawi Thamarak chua ko Mahathir chut faitai" ["Secret meeting in Langkawi, Thamarak believed Mahathir's island used to stir southern fire"], *Thaipost*, 10 September 2005, p. 13; "Mahathir suggests asylum for Thai Muslims", *The Nation*,

Minister Najib Razak said on 28 September Malaysia would not repatriate the group unless Bangkok could guarantee their rights and safety upon return.¹⁰⁵

Bilateral tensions are further complicated by Malaysian domestic politics. The government is under pressure from Muslim activists, particularly in the conservative northern border states, to prioritise the interests of ethnic Malay Thais over relations with Bangkok. The opposition Parti Islam se-Malaysia (PAS), in power in Kelantan, has historically provided political and at times financial support to Thai Malay separatist movements. The populations of Kelantan and other northern border states feel a natural kinship with southern Thai Malay Muslims, and many originally hail from across the border. PAS Secretary General Kamarudin Jaffar released a statement on 7 September, for example, saying the party was "horrified and sickened by the massacre of Muslim civilians" in southern Thailand and urging the government in Kuala Lumpur, as current chair of the Organisation of Islamic Conference (OIC), to establish a task force to look into the matter.¹⁰⁶

The OIC's secretary general, Ekmeleddin Ihsanoglu, needed no urging. On 18 October, he issued a statement expressing "deep concern...about continued acts of violence in Southern Thailand against Muslims, claiming the lives of innocents and inflicting harm on properties. Some villages have been under siege and some families had to migrate".¹⁰⁷ A furious Prime Minister Thaksin shot

back that Ihsanoglu should try reading the holy Koran before criticising his administration's handling of the violence.¹⁰⁸

On 3 October, a coalition of Malaysian Muslim activists protested outside the Thai embassy, calling for a boycott of certain Thai goods.¹⁰⁹ When Thaksin accused the group of "siding with militants", he was chided by the Malaysian foreign minister, who called on Bangkok to "be mature" about the situation.¹¹⁰ This prompted Foreign Minister Kantathi Supamongkhon to lash out at Malaysia for criticising handling of the insurgency. Behind the sniping, officials in both foreign ministries have tried to depoliticise the issue but ministers have frustrated their efforts. The UNHCR has delayed announcing any decision on the status of the 131 until tension eases.¹¹¹

Anand Panyarachun, the National Reconciliation Commission chair, held unofficial meetings on the issue with both Prime Minister Badawi and former Prime Minister Mahathir, and former Thai Foreign Minister Surin Pitsuwan met with Malaysian Deputy Prime Minister Najib Razak, paving the way for formal talks between the prime ministers, but with each new round of accusations that possibility looks more remote.¹¹² Prime Minister Thaksin announced on 30 October that he would not meet his Malaysian counterpart until the suspects among the 131 had been extradited.¹¹³

7 September 2005; "Deep South: Rebels 'plotted on Mahathir's island'", *The Nation*, 10 September 2005.

¹⁰⁵ "KL wants guarantees for 131 Thais", *Bangkok Post*, 29 September 2005. The Thai government has since given assurances to Malaysian government officials and directly to some asylum seekers that their safety would be guaranteed. Thai officials have claimed that part of the group has expressed a desire to come home but Malaysian Deputy Prime Minister Najib Razak denied this. "Malaysia: Thai Muslims won't return home", *Bangkok Post* (Deutsche Presse-Agentur), 1 November 2005. "KL wants guarantees for 131 Thais", *op. cit.*

¹⁰⁶ Parti Islam se-Malaysia press release, 7 September 2005. Kelantan's Chief Minister Dato Nik Abdul Aziz Nik Mat also called on the government in Kuala Lumpur to assist the Thais, as the Koran obliges Muslims to help other Muslims in trouble. See "Bantu pelarian Thai -- MB", *Harakah*, 16-30 September 2005, p. 1. PAS youth held a demonstration outside the Thai Embassy on 9 September.

¹⁰⁷ OIC press release "On recurrent waves of violence in southern Thailand", Jeddah, 18 October 2005. Ihsanoglu had criticised the Thai government's handling of the Tak Bai and Krue Se incidents in April and October 2004, but a visit to Jeddah by Thai diplomats in March 2005, an OIC fact finding mission to southern Thailand between 2 and 13 June and the attendance of a Thai observer at the OIC ministerial meeting in Yemen on 28-30 June helped to mute criticism. See "The OIC extends its help in the South", *The Nation*, 9 June 2005.

¹⁰⁸ "Lai klap pai an khamphi Quran nayok tok OIC kao luang athippathai" ["Thaksin told OIC to read Quran, saying it violates sovereignty"], *Krungthep Thurakit*, 21 October 2005, p. 15; "PM could count cost of his words", *The Nation*, 21 October 2005.

¹⁰⁹ "Southern Ties: Thaksin lambastes Malaysian activists", *The Nation*, 5 October 2005.

¹¹⁰ Thaksin said the Koran instructed Muslims to respect the local law of the land and asked the OIC why it had failed to condemn Muslims behind violence in Iraq (it has). "PM has to build on diplomatic efforts", *The Nation*, 12 October 2005.

¹¹¹ UNHCR Ron Redmond told reporters at a 27 September 2005 press briefing in Geneva that "given the current sensitive situation in southern Thailand, UNHCR has decided to withhold any public pronouncement on the status of the 131 southern Thais currently in Malaysia. We believe any such public declaration on these individual cases would just complicate an already difficult situation".

¹¹² Anand also invited Mahathir, on Thaksin's behalf, to come to Thailand for talks on 21 November 2005. Wan Noor, an ethnic Malay cabinet minister from Yala, made an unofficial visit to Malaysia in early July to help break the ice.

¹¹³ Despite an earlier claim that he would meet Prime Minister Badawi on the margins of the Asia-Pacific Economic Cooperation summit in South Korea in November 2005, he imposed this nigh impossible condition on 30 October. "Thaksin: No meeting unless Malaysia hands over suspects", *Bangkok Post*, 31 October 2005; "Thaksin to talk with Abdullah at Korea meeting", TNA (Thai Agency), 23 October 2005.

VI. MYSTERIOUS KILLINGS IN TANYONG LIMOH

On the evening of 20 September, a drive-by shooting by unidentified gunmen killed two civilians in a village tea shop in Narathiwat's Rangae district, a red zone area. Shortly afterward, angry locals took hostage two marines, who were passing through the area and not in uniform, assuming they were involved. As in Lahan, they set up a barricade to block officials. In the midst of hostage negotiations the next day, the marines were stabbed to death in mysterious circumstances. Separatist militants were almost certainly involved.

A. TEA SHOP SHOOTINGS

At approximately 8:20 p.m., three hooded gunmen in a grey pickup truck opened fire on a Tanyong Limoh village tea shop and sped off, killing two locals and seriously injuring four.¹¹⁴ Angry villagers, some of whom had witnessed the attack, chased the vehicle on foot and claimed to have found a soldier's cap on the road, leading some to suspect a military connection.¹¹⁵ A few police arrived soon after from Rangae district to investigate. Shortly after they arrived, the mosque's call to prayer was sounded to assemble residents.¹¹⁶ As the agitated crowd gathered, the police became nervous and left.¹¹⁷

Shortly after the shooting, marine officers Vinai Nagabutr and Kampol Tongpha from the nearby Chulabhorn camp, came to the village in an unmarked car.¹¹⁸ After looking

¹¹⁴ The killings took place in village seven of Tanyong Limoh sub-district, Rangae district, Narathiwat. It is a "red zone". The two people killed were fourteen-year-old Asuan Awaekaji and 25-year-old Mayunai Duereh.

¹¹⁵ Notes from interviews with Tanyong Limoh villagers made available to Crisis Group; "Eerie silence descends on village", *Bangkok Post*, 23 September 2005; "Violence reveals suspicion and fear in southern Thailand", *Bangkok Post*, 26 September 2005.

¹¹⁶ If something important happens, it is standard in southern Thai villages to use the call to prayer outside of normal prayer times to convene a village meeting.

¹¹⁷ Interviews with Tanyong Limoh villagers made available to Crisis Group.

¹¹⁸ A police report viewed by Crisis Group states the marines arrived in the village around an hour after the shootings. It remains unclear why they were in the area. The Fourth Army commander, Lt. Gen. Kwanchart, told journalists they were on their way to investigate another incident and raced to the area after hearing gunshots. Defence Minister Thammarak said they were going to investigate the Tanyong Limoh tea shop shootings after receiving a call from a local. *Thai Rath*, 23 September 2005; "Village 'Revenge': Massive hunt for marines'

around on foot, the two reportedly returned to their vehicle, which was parked near the tea shop, but it would not start.¹¹⁹

B. HOSTAGE CRISIS AND MURDER OF MARINES

Tanyong Limoh villagers jumped to the conclusion that the marines were part of the group responsible for the drive-by shooting. Their suspicion was reinforced by discovery of an M16 assault rifle and a 9mm pistol in the car.¹²⁰ Villagers thought it odd that armed marines, off duty and out of uniform, were visiting.¹²¹ Around five minutes after the marines arrived in the village, locals heard an announcement from the mosque's loudspeaker that they were the killers.¹²² An angry crowd dragged them out of the car and marched them to the village mosque.¹²³ Some 300 men, a number of whom were from outside, blocked the entrances to the village.¹²⁴

Unaware of the hostage-taking, a larger police contingent arrived to investigate the shooting. On learning of the marines' capture, they made no attempt to negotiate but stationed officers around the village for the night. Instead, the Southern Border Provinces Peace Building Command chief, Gen. Kwanchart, sent local officials and community leaders to negotiate unsuccessfully for the marines' release. At 3:00 a.m., the hostage takers reportedly demanded to speak to Narathiwat Governor Pracha Therat.¹²⁵

At approximately 6:00 a.m., the governor, accompanied by former Narathiwat parliamentarian Najmuddin Umar, arrived to negotiate. By 7:00 a.m., Najmuddin had persuaded villagers that the marines were not involved in the shooting but locals still believed they were "from the same side" as the gunmen. The hostage-takers themselves

killers", *The Nation*, 22 September 2005; "Hunt is on for killers of marines", *Bangkok Post*, 13 September 2005.

¹¹⁹ Pree Tanilu, the 28-year-old son of the tea shop's owner, has been arrested for allegedly putting sand in the petrol tank of the marines' car. "Another suspect held for murder of marines", *Bangkok Post*, 2 October 2005.

¹²⁰ "Chuamong wikrit thi Tanyong Limoh" ["Nineteen critical hours at Tanyong Limoh"], Isara News Centre, 21 September 2005.

¹²¹ Notes of interviews with residents of Tanyong Limoh made available to Crisis Group, September 2005.

¹²² Witness testimony cited in a police report viewed by Crisis Group.

¹²³ They were held in the mosque storeroom next door.

¹²⁴ There is only one road through the village.

¹²⁵ Interviews with Tanyong Limoh villagers made available to Crisis Group; "Nineteen critical hours", op. cit.; "Army to take 'more serious approach' to unrest", *Bangkok Post*, 22 September 2005.

refused to speak to anyone until foreign journalists, preferably Malaysians, arrived.¹²⁶

Meanwhile, villagers had erected a more sophisticated blockade, obstructing the entrance road with a felled tree to prevent officials from entering the village. About 100 metres beyond, at Ai Dang Bridge, locals erected a tent, in which more than 200 women and children formed a human barricade, with banners reading, in Thai and romanised Malay, "the terrorists are you" and "Thaksin blundered. The insurgency has intensified since the emergency decree".¹²⁷ Villagers set up two additional barricades at the other entrances, one guarded by women and children, the other by men.¹²⁸

The women on the main blockade initially refused all officials entry. At 10:30 a.m., however, they allowed in Najmuddin and Deputy Fourth Army Chief Gen. Pichet Wisaichorn. They were not permitted to enter the building where the hostages were held but saw the two marines alive from a distance, though they looked as if they had been beaten. Gen. Pichet asked that they be given food and water.¹²⁹ The hostage-takers insisted there would be no negotiations until Malaysian reporters arrived. Pichet agreed and left to make arrangements for journalists from four Malaysian agencies to be brought to Tanyong Limoh by military helicopter.¹³⁰ At around 11:45, Najmuddin emerged from the village with bullet casings, apparently from an AK assault rifle, from the tea shop shootings, which he promised to have identified by neutral experts from the justice ministry's forensic institute.

At approximately 12:40 p.m., Gen. Pichet made another attempt to negotiate the marines' release. He had been informed they were injured and wanted them taken to hospital. He was refused.

At around 1:25 p.m., an announcement was made from the mosque loudspeaker that men in military uniform had entered the village from the north, through the rubber plantation, and for the women to keep them out. Villagers became agitated at rumours that the army was preparing to send in tanks.¹³¹ The women and children guarding the hostages ran to confer with the women at the front picket. Adding to the commotion, people were rushing back and forth from both stations to the mosque for *zuhur* (midday) prayer.¹³² Approximately ten minutes later, Col. Apithai Sawangpob, Fourth Army civil affairs director in charge of the operation, arrived to announce a helicopter had been dispatched to collect six Malaysian reporters from the nearby Sungai Kolok border crossing.¹³³

At approximately 2:20 p.m., Rangae district officials, who had been brought in that morning to facilitate negotiations, entered the village to assess the situation. They reported back to Gen. Pichet and Col. Apithai that one marine had been physically assaulted. The villagers guarding the hostages said they returned from the mosque after prayers to find three or four hooded teenagers attacking them. They cried out, and the young men fled.

Col. Apithai approached the tent picket to explain that one of his men had been injured and requested permission to enter the village. The women cleared a path to allow him and Gen. Pichet to drive in. When they got to the mosque storeroom where the hostages were being held, no one could find the key. Eventually villagers helped them break down the door, but they discovered both marines had been stabbed and beaten to death.¹³⁴

Minutes later, the Malaysian journalists arrived. As they were about to enter the village (approximately 2:45 p.m.), a government negotiator, Masuding Wama, emerged to announce the killings. Col. Apithai and Gen. Pichet took

¹²⁶ Thai television reporters arrived at 7:00 a.m. but villagers refused to talk to them, demanding Malaysians. "Lamdap hetkhan khon song thanhan sea chiwit" ["Chronology of incidents preceding the death of the soldiers"], *Matichon*, 22 September 2005, p. 2; "Local residents don't trust Thai journalists", *The Nation*, 22 September 2005.

¹²⁷ Photographs sent to Crisis Group from Tanyong Limo; "Nineteen critical hours", op. cit. Thai Muslims tend to use the Jawi (Arabic) script to write Malay, whereas the romanised form is more common in Malaysia. Perhaps these signs were aimed at the Malaysian journalists the hostage-takers had requested.

¹²⁸ Police report viewed by Crisis Group.

¹²⁹ "Village 'Revenge': Massive hunt for marines' killers", op. cit.

¹³⁰ Reporters from *Berita Harian*, *Utusan Malaysia*, the *New Straits Times* and *Bernama* arrived by helicopter at approximately 2:45 p.m. "Local residents don't trust Thai journalists", *The Nation*, 22 September 2005.

¹³¹ The army had stationed troops around the village but kept them at a respectful distance to avoid escalating the tense situation. The villagers may have been referring to the young militants who attacked the marines when they said "men in military uniform" had entered the village. Crisis Group phone interview with Fourth Army (southern) region officer, 20 October, "Nineteen critical hours", op. cit.

¹³² *Zuhur* is between approximately 12:10 p.m. and 3:25 p.m. in southern Thailand in late September. Prayers should be conducted at the beginning of the period, as soon as possible after the *azan* (call to prayer) is sounded from the mosque. It is odd, therefore that all the villagers guarding the hostages were praying at the same time, towards the end of the period, when the hostages were killed.

¹³³ Sungai Kolok is about 40 km from Tanyong Limoh, which by helicopter should take little time.

¹³⁴ Police report viewed by Crisis Group.

the mutilated bodies in their truck to Rangae district hospital for autopsies.¹³⁵

C. POSSIBLE EXPLANATIONS

What initially appeared a spontaneous reaction to a suspected extra-judicial killing began to look increasingly like a reasonably sophisticated and well-organised operation. It is not yet known who decided to block the entrance road and demand Malaysian journalists before negotiating. Police have some evidence that members of the Muslim separatist militant group BRN-Coordinate (BRN-C) were involved but have not yet established the identities of all the killers, their affiliations, or ties with the hostage-takers and other villagers.¹³⁶

1. Vigilante violence?

The initial hostage-taking was quite possibly a spontaneous reaction of angry villagers, wary of authorities. Mistrust which has incubated over decades has reached such a level in some areas that locals would rather take matters into their own hands than entrust security or justice to officials. This also makes them susceptible to manipulation by anti-government forces.

Vigilante violence is not unknown in the area. In April 2003, for example, after two young men in Tanyong Mas sub-district (also in Rangae district, not far from Tanyong Limoh) were executed by unidentified gunmen, villagers seized two out of uniform police they claimed to recognise as the killers and took them hostage at a village head's house. An angry mob of hundreds later beat the officers to death.¹³⁷

¹³⁵ Autopsies revealed evidence of torture. The marines' captors had bound their hands and feet, blindfolded and gagged them, and then repeatedly hit them in the head and stabbed them in the body. Their fingernails and toenails had been hit with a hammer, and hot liquid poured on their bodies. They died between 2:00 p.m. and 3:00 p.m. on 21 September. "Murdered officers were tortured", *Bangkok Post*, 23 September 2005; *Thai Rath*, 23 September 2005, p. 16.

¹³⁶ BRN-C is the only active faction of a Muslim separatist group, Barisan Revolusi Nasional (BRN), established in the early 1960s to fight for an independent Patani state. Its ideology was ethno-nationalist with a slight socialist bent until the 1980s, when it took on a more overtly Islamic tone and split into three major factions. BRN-C is believed to be directing a significant proportion of the current violence, largely through a youth wing, Pemuda. See Crisis Group Report, *Insurgency, Not Jihad*, op. cit.

¹³⁷ Crisis Group interview with police official, April 2005. Many in the lynch mob also believed the officers were part of a gang of robbers active in the area. "Police lynchings: 'Justice will be done'", *The Nation*, 29 April 2003.

The killing of the marines in Tanyong Limoh, however, was not by a mob. The marines had been beaten during the night by their angry captors but locals claimed it was never their intention to kill them.¹³⁸ Eyewitnesses reported seeing a small group of hooded youths who entered the village surreptitiously attack the marines while the hostage-takers were at midday prayers and flee when seen by villagers returning from the mosque. It appears, then, that the majority of the hostage-takers were not linked to the killers.¹³⁹

The hostage-taking, if spontaneous, was apparently hijacked by separatist militants.¹⁴⁰ A number of villagers reportedly had been cooperating with separatists for weeks prior to the incident, monitoring the movements of officials in and out of the village.¹⁴¹ At the blockade, a young, bespectacled man in combat trousers was reportedly encouraging villagers to resist authority.¹⁴² He may have been a local, angered by the tea shop killings, but he could also have been an outside provocateur. Tanyong Limoh headman Romoeli Ti-ngi said that of the roughly 1,000 people present, "more than half of them were not from this village". Chief government negotiator and Narathiwat politician Najmuddin Umar said many of the outsiders had been mobilised by insurgents.¹⁴³

¹³⁸ Crisis Group phone interview with Fourth Army (southern region) officer, 20 October 2005.

¹³⁹ Police argue, however, that separatists organised six teams to carry out different tasks in the operation: one to obtain the mosque storeroom key and prepare the room for the hostages, one to control the mosque loudspeaker, one to take the hostages, one to form a barricade and stall negotiations with officials, one to provide food for the community, and one to kill the marines. Police report viewed by Crisis Group.

¹⁴⁰ Although the hostage-taking may well have been spontaneous, the barricade had allegedly been discussed earlier -- at least hypothetically. According to army sources, Tanyong Limoh residents had held a meeting after the Lahan incident and agreed that if any mysterious killing or suspicious event took place in their village, women and children would barricade the village to protect the men, as in Lahan. This meeting could have been organised by a local member of a separatist group without revealing an affiliation. Crisis Group telephone interview with Fourth Army (southern) region officer, 20 October 2005.

¹⁴¹ A number of villagers had turned themselves in to the authorities just over a week before the incident, on 12 September, and told police that local women and children had been monitoring the movements of outsiders and sending signals to separatist leaders by sounding clapboards. Police report viewed by Crisis Group.

¹⁴² "Nineteen critical hours", op. cit.

¹⁴³ "Violence reveals suspicion and fear in southern Thailand", *Bangkok Post*, 26 September 2005.

2. BRN-Coordinate operation?

There is a consensus among Tanyong Limoh residents and security officials that militants fatally stabbed the marines in a hit-and-run attack. Police argue, however, that the hostage-taking was part of the militants' plan, and some locals were involved. The regional police chief, Lt. Gen. Adul Saengsingkaew, asserted that even the tea shop shootings were contrived to draw security forces to the scene.¹⁴⁴ Insurgents allegedly held a meeting to work out the operation in the mosque just before the shootings.¹⁴⁵ Some villagers also told police that at around 5:00 p.m., a local, known separatist asked the mosque janitor to borrow the key to the storeroom where the hostages were later held, claiming he wanted to clean it.¹⁴⁶

Investigators have gathered eyewitness testimony and claim to have physical evidence implicating locals in the murder of the marines, including at least one member of BRN-Coordinate, Annisan Nikaji. Police reportedly arrested Annisan as he tried to wash blood stains out of his shirt two days after the killings, on 23 September.¹⁴⁷ Results of forensic tests are not yet available.

Officials say two key suspects still at large are also members of BRN-C: Niasae Domae and Ni-amran Nikaji.¹⁴⁸ Senior police reportedly claim twenty

eyewitnesses implicated the three alleged BRN-C members in the marines' deaths and for organising other locals to set up the barricade at the village entrance. Authorities believe Niasae and Ni-amran are hiding in Narathiwat.¹⁴⁹ After the arrests of three locals, almost all the village's remaining young men fled, fearing arrest. Many families do not know their sons' whereabouts and worry they may have been kidnapped by soldiers.¹⁵⁰ Those remaining in Tanyong Limoh have been reluctant to testify.¹⁵¹

Police arrested another six locals in connection with the murders, however, including Pree Tanilu, the son of the tea shop's owner, who officials allege put sand in the petrol tank of the marines' car, but it is not clear whether any are linked to BRN-C.¹⁵² On 1 October, they arrested Useng Salaelu, having discovered the marines' uniforms and berets and two knives buried by his house.¹⁵³

Neither the forensic evidence nor the witness testimony revealed by police have yet been examined in a court but the case they make that BRN-C orchestrated the marines' murders, if not the entire operation, is fairly convincing. That villagers were so easily mobilised to participate in the hostage-taking, although presumably they did not know the marines would be killed, demonstrates the depth of suspicion and antagonism towards the security forces.

¹⁴⁴ Lt. Gen. Adul argued that the incident at the tea shop was not intended to kill but to draw security forces to the scene and incite villagers to capture them. He claimed the spiral markings on the M16 bullets recovered from the scene matched a gun used in an attack in Sungai Padi district, in December 2004 (the killing of a soldier, Sarawud Mukornbada) and May 2005 (a civilian, Abdullah Ma), both allegedly committed by insurgents. Police report viewed by Crisis Group. But a security expert, who spoke anonymously to *The Nation*, said Thai police did not have technology precise enough to make that finding. "Govt. is not behind teashop slayings", *The Nation*, 2 October 2005; "Another suspect held for murder of marines", *Bangkok Post*, 2 October 2005.

¹⁴⁵ Police report viewed by Crisis Group. "Two police killed in rail bomb blast", *Bangkok Post*, 3 October 2005; Crisis Group telephone interview with military intelligence official, 23 October 2005.

¹⁴⁶ Testimony cited in a police report viewed by Crisis Group.

¹⁴⁷ Annisan has also been transliterated as An-ensan and Ulnisan. "Killing of marines: beasts will be caught, PM vows", *The Nation*, 25 September 2005. 34 suspects have been arrested, fifteen of whom were released after questioning, and nineteen charged in connection with the murders.

¹⁴⁸ "Three BRN men wanted for killings", *Bangkok Post*, 30 September 2005. Police claim they were also involved in inciting the demonstration at Tak Bai police station in October 2004. They were arrested at the protest but released after questioning. On the Tak Bai protest, see Crisis Group Report, *Insurgency, Not Jihad*, 18 May 2005, pp. 27-32.

¹⁴⁹ "Three BRN men wanted for killings", op. cit.

¹⁵⁰ The level of anxiety and suspicion in the area is at an all-time high. A local said, "we are scared they have been picked up by the soldiers; we don't know if they have run away or been picked up. The mothers cry and cry until they can cry no more". "Tough to beat enemy not knowing who they are", *Sydney Morning Herald*, 1 October 2005.

¹⁵¹ Locals complain the police who come to make arrests and question people do not wear uniforms and drive unmarked cars without license plates. Interviews with Tanyong Limoh villagers made available to Crisis Group, October 2005.

¹⁵² Police arrested on 28 September 2005 Tuanphanee Tuankusripoe, Doramae Haji Thaseh Useng Saleh, and Yenah Kaseng. "Woman held over marines murder", *The Nation*, 29 September 2005. Two natives of neighbouring Chalerm sub-district, Mahkoseng Waekaji and Sakari Tuanbula, were arrested on 25 September for instigating unrest and mobilising people to obstruct efforts to secure the marines' release. "Tanyonglimo murders: two more men arrested over killing of marines", *The Nation*, 27 September 2005.

¹⁵³ "Another suspect held for murder of marines", *Bangkok Post*, 2 October 2005

D. IMPLICATIONS AND GOVERNMENT RESPONSE

The key lesson the government seems to have taken from the incident is that more troops and a more aggressive posture are needed. Fourth Army Commander Lt Gen. Kwanchart said the day after the killings, "as they don't want peace, we might opt for a more serious approach".¹⁵⁴ He explained that the military stuck to negotiations, foregoing an armed rescue and resulting in the deaths of two soldiers.¹⁵⁵ This was echoed by the marines' commander, Capt. Traikwan Krairerk, who had requested permission to rescue them. He said, "I am still a wrongdoer in the eyes of my fellow soldiers, who only see that I didn't try to help my subordinates...[Their deaths] have demonstrated to relevant agencies the limitations of working in these areas using a purely legal approach".¹⁵⁶

Obviously shaken by the deaths of his men, Capt. Krairerk said, "I am furious. They killed my men. If I could, I would drop napalm bombs all over that village", then hastily added, "but the fact is I can never do that. We are soldiers. We must follow the law. We can only take revenge by using the law".¹⁵⁷ Taking revenge, even within the (ever broader) confines of law will not win the hearts and minds of villagers.

Prime Minister Thaksin called the killers "wild animals", vowed the marines would not die in vain, and instructed officials to take tough action against militants. He said he would personally take the blame for any "mistakes" made by officials.¹⁵⁸ As NRC member Worawit Baru pointed out, this language "could be misconstrued as a green light" for using overwhelming force.¹⁵⁹

The psychological impact of the marines' murders on troops in the south was profound. It precipitated the Fourth Army command's decision to make a tactical shift

from defence to offence. Defence Minister Thamarak explained that "in the past, we were on the defensive too much. From now on we will no longer let militants attack and flee before we chase them. We will respond swiftly, and clashes may result. Clashes with militants will be seen".¹⁶⁰

On 7 October, the Southern Border Provinces Peace Building Command announced a plan to establish three new army task forces, bringing total troop strength in the region to over 20,000.¹⁶¹ More than 1,000 additional special operations police were dispatched there on 8 October.¹⁶² Prime Minister Thaksin publicly announced on 27 October: "The government has exercised a lot of patience. An aggressive style of operations will begin from early November. Government forces are in the process of changing their tactics".¹⁶³

Although separatist militants pose a serious and escalating security threat, and the Thai government has a responsibility to arrest and punish perpetrators of violence, merely stepping up a military campaign that has demonstrably failed to stem the killings over nearly two years would miss the point. An important lesson the government does not seem to have learned from the killings is that villagers in red zones -- some knowingly, some unwittingly -- cooperate with militants because they lack faith in security forces to protect them, and in some cases, due to hostility based on conviction that those forces are prejudiced if not abusive. Many reacted to what they considered a government death squad killing civilians. Although Crisis Group has seen no evidence to back up such a judgement, many Malay Muslims easily believe it on the basis of past abuses by security forces.

As a Narathiwat local put it, "we feel that the security forces are bent on attacking rather than protecting us". Several southern Muslims expressed similar sentiments to Crisis Group.¹⁶⁴ The Southern Border Provinces Peace

¹⁵⁴ "Hetsalot thi Tanyong Limoh lang kan cheracha 19 chuamong lomleaw" ["The tragedy at Tanyong Limoh after the 19-hour negotiation fails"], *Matichon*, 22 September, 2005, p. 2; "Army to take 'more serious approach' to unrest", op. cit.

¹⁵⁵ "The tragedy at Tanyong Limoh", op. cit.

¹⁵⁶ "Samphat phiset na wa eak Traikwan Krairerk: khwam kotdan thi Tanyong Limoh" ["Exclusive interview with Capt. Traikwan Krairerk: Pressure at Tanyong Limoh"], Isara News Centre, 26 September 2005.

¹⁵⁷ "Angry soldier vows to avenge men's death", *Bangkok Post*, 22 September 2005.

¹⁵⁸ *Thai Rath*, 25 September 2005, p. 18; "Hostage killings: do not retaliate, NRC warns", *The Nation*, 27 September 2005.

¹⁵⁹ "Mattakan detkhat phawa antarai lang wikrit Tanyong Limoh" ["Heavy-handed approach: A dangerous situation after the Tanyong Limoh"], Isara News Centre, 22 September 2005; "Senate group urges all to remain calm", *Bangkok Post*, 23 September 2005.

¹⁶⁰ "More clashes with rebels likely as govt. goes on the offensive", *Bangkok Post*, 24 October 2005.

¹⁶¹ The chief of the Fourth Army and Southern Border Provinces Peace Building Command, Lt. Gen. Kwanchart Klaharn, has sought approval to set up three task forces for deployment in the provinces of Yala, Pattani and Narathiwat and four districts of Songkhla. Two would be tasked respectively with combat operations and special warfare (development and psychological warfare); the third would be comprised of rangers and border patrol troops and assist the other two. "New army task forces to be set up", *Bangkok Post*, 8 October 2005.

¹⁶² "Over 1,000 police head for the South", *Bangkok Post*, 9 October 2005.

¹⁶³ "PM: Hunt them down, aggressive tactics ordered in South", *Bangkok Post*, 28 August 2005.

¹⁶⁴ Crisis Group interviews, December 2004, April/September 2005.

Building Command needs to work seriously at improving community relations.

E. SOFTENING THE BLOW

Steps the Fourth Army command has initiated in recent months to build trust with local communities take on new importance in light of this more aggressive posture the forces are to adopt. Commanding officers at the district level had previously been instructed to be peacekeepers, using force only as a last resort and making every effort to build trust and good relations with villagers. Now that stance has changed, particular attention should be given to bolstering the community relations programs.

Some field commanders already consult regularly with local politicians and religious leaders, seeking advice on cultural norms. One district commander had set up a council of community leaders with which he routinely conferred before conducting searches or arrests. He encouraged this council to raise concerns with officers in weekly meetings. He admitted, however, that such initiatives were not in place everywhere and were largely dependent on individual initiative and subject to disruption from command rotations.¹⁶⁵

Strengthening and expanding this sort of initiative could be important for rebuilding trust, particularly if implemented at the village [*baan*] level, as the NRC recommended in July and Prawase Wasi, its deputy chairman, reiterated after the Tanyong Limoh killings.¹⁶⁶ Such a program would be greatly enhanced if officers stationed in the south were trained more systematically in the Malay language and cultural awareness.

Establishing a centre independent of the police to investigate missing persons, a proposal on the table since at least March 2005 and to which officials have paid lip service, would also help reassure locals.¹⁶⁷ Villagers too frightened to approach the police or military could initiate investigations through the centre. As well as providing a check on abuses, an independent investigative body could counteract misinformation that unfairly damages the reputation of the forces.

Local human rights organisations have hitherto functioned as a repository for case information that people are not willing to give to police but they are not in a position to investigate. Their monitoring would be more effective if formal investigations and prosecutions were pursued. The Lawyers Council, the National Human Rights Commission and the NRC jointly established legal aid centres in Pattani, Yala and Narathiwat in September, which will also do important monitoring. Locals are encouraged to register the time and place of arrests with the centres so that each may be monitored by the legal staff.¹⁶⁸ Government support for this initiative, particularly ensuring the lawyers' access to detainees, would send a positive signal of commitment to rights protection, which might in turn improve locals' cooperation with police investigations.

Another major reason for reluctance to give the police and intelligence agencies information is fear of the separatist militants. Many Muslim civilians killed since January 2004 were suspected informants. Strengthening the justice ministry's witness protection program may encourage more help to the police.

¹⁶⁵ Crisis Group interview, September 2005.

¹⁶⁶ "Hostage killings: Do not retaliate, NRC warns", *The Nation*, 27 September 2005.

¹⁶⁷ After the government asked the justice ministry to establish the centre, under the direction of Pornthip Rojanasunan of the Central Institute for Forensic Science (CIFS), Interior Minister Chidchai Wannasathit tasked the national police to establish it under the police legal adviser, Noppadol Somboonsap. Prime Minister Thaksin reaffirmed that the centre would be set up under the justice ministry but the matter is still unresolved. "PM: Centre to come under Justice", *Bangkok Post*, 11 June 2005.

¹⁶⁸ Crisis Group interview with Dej Udom Krairit, president of the Lawyers Council and National Reconciliation commissioner, Bangkok, 15 September 2005. See also "Legal aid alliance formed in far South, Rights groups aim to help locals get justice", *Bangkok Post*, 20 September 2005.

VII. LINKS TO TERRORIST GROUPS IN THE REGION?

Ever since violence surged in January 2004, officials and observers have expressed concern about the possibility of jihadist groups outside Thailand such as Jemaah Islamiyah (JI) becoming involved in the conflict.¹⁶⁹ JI members from Indonesia, Malaysia and Singapore have spent time in Thailand in recent years, on the run from police sweeps in their own countries. These include Ridwan Isamuiddin alias Hambali, the Afghanistan-trained head of JI's Mantiqi I, who was arrested by Thai police in Ayutthaya, north of Bangkok, in August 2003. JI fugitives have made use of a network of Thai contacts that goes back almost two decades but there is no evidence they have played a role in the current violence in the south; indeed, their Thai Muslim contacts are not linked to the unrest.¹⁷⁰

Singaporean JI member Arifin bin Ali, alias John Wong Ah Hung, who fled to Thailand in December 2001, was arrested in Bangkok in May 2003.¹⁷¹ He implicated three Thais -- Waemahadi Waedao, a medical doctor from Muang district, Narathiwat; Maisuri Haji Abdulloh, the head of Burana Islamic School, Narathiwat; and Samarn Waekaji, a soft-drinks vendor from Yala -- in an alleged

¹⁶⁹ See "Thailand: The road to jihad?", *Time Asia*, 10 May 2004; "Thailand: Gearing up for a fight", *Far Eastern Economic Review*, 13 May 2004; Anthony Davis, "Ethnic divide widens in Thailand", *Jane's Terrorism & Security Monitor*, 1 November 2004; "The Thai terror front", *The Wall Street Journal*, 24 February 2005; "Terror warning: Govt 'blind to JI link'", *The Nation*, 7 March 2005 (quoting Zachary Abuza); "As Thai insurgency spreads, government opens door to dialogue", *The Christian Science Monitor*, 25 April 2005 (citing Paul Quaglia); B. Raman, "Jihad In London & Thailand: The link", South Asia Analysis Group, 17 July 2005; Stephen Ulph, "Thailand's Islamist insurgency on the brink", *Terrorism Focus*, 4 October 2005. Rohan Gunaratna, Arabinda Acharya and Sabrina Chua, *Conflict and Terrorism in Southern Thailand* (Marshall Cavendish, 2005).

¹⁷⁰ The first person that several senior JI leaders, including Hambli, Mukhlas, Azhari Husin, Noordin Mohamad Top and Wan Min bin Wan Mat, contacted when they arrived in Thailand was a man named Abdul Fatah, who runs a pondok in rural Narathiwat. He is a member of a local group called Jemaah Salafi, which is sympathetic to JI, but would not have any part of proposed JI operations in Thailand for fear they would provoke a crackdown on his group's primary mission of preaching. Nor is there any link between Jemaah Salafi and any of the separatist groups. See Crisis Group Report, *Insurgency, Not Jihad*, op. cit., pp. 37-38; also Ken Conboy, *The Second Front: Inside Asia's Most Dangerous Terrorist Network* (Equinox, 2005), pp. 152, 157, 204.

¹⁷¹ Singapore Ministry of Home Affairs, "Press statement on the arrest of Jemaah Islamiyah fugitive - Arifin bin Ali alias John Wong", 10 June 2003.

plot to detonate car bombs simultaneously at the U.S., British, Israeli, Singapore and Australian Embassies in Bangkok, as well as tourist areas in Phuket and Pattaya.

Waemahadi, Maisuri and Maisuri's son, Muyahi, were arrested in Narathiwat in June 2003.¹⁷² Samarn voluntarily surrendered in Yala in July of that year after learning of the warrant for his arrest.¹⁷³ The four were charged on 18 November 2003 with conspiring to endanger national security and membership of an unlawful group.¹⁷⁴ However, the prosecution produced little evidence beyond Arifin's testimony, which was ruled unreliable by the Bangkok Criminal Court.¹⁷⁵ All were acquitted on 1 June 2005 and released.¹⁷⁶

Almost all Thai officials believe that the southern violence is a purely domestic affair. Some have alluded to external involvement but few have advanced specific accusations. Retired Army Gen. Kittirattanachaya asserted in July 2005, citing intelligence sources, that at least seven Indonesian militants had provided military training to Thai Muslims in the south.¹⁷⁷ In September 2005, an unnamed intelligence source reportedly claimed that BRN was working under a previously unknown regional terror network led by an Indonesian but no other intelligence officer backed this up.¹⁷⁸

As bombs become larger and more sophisticated, speculation that Thai militants receive outside help intensifies but no hard evidence has been produced. If such help materialises, it is as likely to be from South Asia, where many Thai Muslims study, as from Indonesia.

¹⁷² Arifin confessed that he also had contact with Maisuri's son, Muyahi Haji Abdulloh, but that Muyahi had not been involved in planning the attacks. "Trial of JI suspects: 'Extreme chaos' planned", *The Nation*, 29 November 2003.

¹⁷³ "Thaksin convinced of suspect's terror links", *The Nation*, 10 July 2003.

¹⁷⁴ For testimony of Police Major Pirapong Duangamporn, see "Khem korjorkor puan hariraya" ["Tense, terrorists plan holiday sabotage"], *Khom Chad Luek*, 19 November 2003; Supalak and Don, op. cit., p. 250; "Bomb plot: Teacher denies role in embassy plan", *The Nation*, 16 March 2005. Waemahadi was also charged with sheltering Arifin. Waemahadi and Maisuri vigorously denied the charges when they appeared in court in December 2003 and February 2004 respectively. "JI terror suspect denies all charges", *The Nation*, 2 February 2005.

¹⁷⁵ Crisis Group interview with Dr Waemahadi's defence lawyer, Kitcha Ali-Ishak, Bangkok, 16 September 2005. It was revealed during the trial that members of the Department of Special Investigations had fabricated documents.

¹⁷⁶ "JI' acquittal won't be appealed", *The Nation*, 7 July 2005.

¹⁷⁷ "Indonesian militants train with Thai separatists: Ex-General", Associated Press, 4 July 2005.

¹⁷⁸ "Newest rebel group headed by Indonesian", *Bangkok Post*, 20 September 2005.

VIII. CONCLUSION

The most clearly observable impact of the emergency decree is the increased alienation in Malay Muslim communities. Reactions to the Lahan and Tanyong Limoh killings and the flight of 131 people to Malaysia are cases in point. Despite this, and the absence of any demonstrable strategic gain, the cabinet renewed the state of emergency on 19 October 2005 for three months. There are ways the government could mitigate the decree's negative impact and thus begin to rebuild trust between locals and security forces. Removing Sections 16 and 17 and amending Sections 11 and 12 would be a start but would need to be accompanied by a village-level communications strategy to explain the changes and reassure locals the decree is not a threat to their rights or safety.

The escalating violence in the region points to a substantial military presence in at least parts of the three southern provinces for some time to come. Improving community relations, therefore, is crucial. The more confidence Malay Muslim villagers have in police and the military, the more likely they will be to assist with investigations and provide badly needed intelligence information that could help prevent attacks. As the military's new (Muslim) commander-in-chief, Gen. Sonthi Boonyaratglin, admitted, "we have to continue looking for better ways to deal with [the insurgency]. We are now like a blind man groping.... A right solution has yet to be found".¹⁷⁹

Intensifying the military campaign, given its notable lack of success, is unlikely to reduce violence substantially. Building on the Southern Border Provinces Peace Building Command's efforts to improve soldiers' cultural awareness, Malay language skills, and relationships with local leaders, however, could, over time, have a greater impact. The NRC has suggested the authorities set up, with southern residents, joint community peace committees to facilitate communication and build mutual trust.¹⁸⁰ Similar initiatives have already been undertaken by a handful of

military commanders in the south. Systematically expanding the initiative could make a difference.

Supporting local non-governmental organisations such as the new legal centres in Pattani, Yala and Narathiwat, established jointly by the Law Society and the National Human Rights Commission, would also help reassure locals of the government's commitment to protecting their rights. As well as providing legal assistance, these centres could fulfil an important monitoring function.

Unless relations between the security forces and southern Muslims begin to improve, and until rumours of abuses and disappearances can be properly investigated, the growing alienation among Thailand's Malay Muslims may turn into sympathy, support and even recruits for the insurgency.

Jakarta/Brussels, 18 November 2005

¹⁷⁹ "Sonthi: Authorities still in dark", *Bangkok Post*, 19 October 2005. Gen. Sonthi is a practicing Muslim and Thailand's first non-Buddhist commander-in-chief but not a southern Malay.

¹⁸⁰ This recommendation was included in the commission's fourteen suggestions to the government in response to the declaration of the state of emergency. "Pherd 14 khosaner ko or so lod khwam runreang changwat chaidan tai" ["Fourteen suggestions of the NRC to reduce violence in the southern border provinces"], reproduced in *Krungthep Turakit* and *Matichon* newspapers, 27 July 2005. It was reiterated by Prawase Wasi after the Tanyong Limo killings. "Hostage killings: Do not retaliate, NRC warns", *The Nation*, 27 September 2005.

APPENDIX B

MAP OF THAILAND'S THREE SOUTHERN PROVINCES



APPENDIX C

ENGLISH TRANSLATION OF THE EMERGENCY DECREE

Emergency Decree

on

Public Administration in Emergency Situation, B.E. 2548 (2005)

BHUMIBOL ADULYADEJ, REX;

Given on the 16th Day of July B.E. 2548

Being the 60th Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on public administration in emergency situations;

Whereas it is aware that this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 29 in conjunction with section 31, section 35, section 36, section 37, section 39, section 44, section 48 and section 50 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

By virtue of section 218 of the Constitution of the Kingdom of Thailand, an Emergency Decree is hereby enacted, as follows:

Section 1. This Emergency Decree is called "Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005)".

Section 2. This Emergency Decree shall come into force as from the day following the date of its publication in the Government Gazette.*

Section 3. The Act on Public Administration in Emergency Situation, B.E. 2495 (1952) shall be repealed.

Section 4. In this Emergency Decree:

"Emergency situation" means a situation, which affects or may affect the public order of the people or endangers the security of the State or may cause the country or any part of the country to fall into a state of difficulty or contains an offence relating to terrorism under the Penal Code, a battle or war, pursuant to which it is necessary to enact emergency measures to preserve the democratic regime of government with the King as Head of State of the Kingdom of Thailand under the Constitution of the Kingdom of Thailand, independence and territorial integrity, the interests of the nation, compliance with the law, the safety of the people, the normal living of the people, the protection of rights, liberties and public order or public interest, or the aversion or remedy of damages arising from urgent and serious public calamity.

"Competent official" means a person appointed by the Prime Minister to perform an act under this Emergency Decree.

Section 5. In the event of the occurrence of an emergency situation and the Prime Minister considers that it is appropriate to use the force of administrative officials or police officers, civil officials or military officers to jointly provide assistance, prevent, remedy, suppress, withhold the emergency situation, rehabilitation or provide assistance to the people, the Prime Minister upon the approval of the Council of Ministers is empowered to declare an emergency situation applicable to the whole Kingdom or in some area or locality as necessary for the situation. In the case where the approval of the Council of Ministers cannot be obtained in a timely manner, the Prime Minister may declare the emergency situation immediately and shall subsequently seek the approval of the Council of Ministers within three days. If approval of the Council of Ministers is

not obtained within the time prescribed, or the Council of Minister refuses approval, such declaration of emergency situation shall cease to be in force.

The declaration of emergency situation under paragraph one shall be in force for the duration prescribed by the Prime Minister but shall not exceed three months from the date of declaration. In the case where it is necessary to extend such period, the Prime Minister upon the approval of the Council of Ministers shall have the power to declare the extension of duration of enforcement provided that each extension shall not exceed three months.

At the end of the emergency situation or upon the disapproval of the Council of Ministers or upon the lapse of the period under paragraph two, the Prime Minister shall declare the annulment of such emergency situation.

Section 6. There shall be a Public Administration in Emergency Situation Committee consisting of a Deputy Prime Minister assigned by the Prime Minister as Chairperson, Minister of Defence, Minister of Interior and Minister of Justice as Vice Chairpersons, Permanent Secretary for Defence, Permanent Secretary for Interior, Permanent Secretary for Social Development and Human Security, Permanent Secretary for Justice, Director-General of the National Security Council, Attorney-General, Supreme Commander, Commander in Chief of the Royal Thai Army, Commander in Chief of the Royal Thai Navy, Commander in Chief of the Royal Thai Air Force, Commissioner-General of the Royal Thai Police, Director-General of the Department of Provincial Administration and Director-General of the Department Disaster Prevention and Mitigation as members, and National Security Council as member and secretary, having the powers and duties to monitor and inspect domestic and international situations which may arise from the emergency situation in order to advise the Prime Minister in the case where it is necessary to declare an emergency situation under section 5 or in the case of a serious situation under section 11 and for the implementation of appropriate measures under this Emergency Decree in order to prevent, remedy and withhold such emergency situation.

The provisions of this section shall not prejudice the exercise [of] powers of the Prime Minister under Section 5 in the declaration of emergency situation when there is a necessary and urgent situation which may endanger the country or the people.

Section 7. In an area or locality prescribed in a Declaration of Emergency Situation under section 5, powers and duties of a Minister, Ministry or several Ministries having charge and control of the execution of any law or empowered under any law, only in relation to the provisions on the issue of a permission, approval, order, command or aid in the prevention, remedy, suppression or withholding in an emergency situation or rehabilitation or provision of assistance to the people, shall be temporarily transferred as powers and duties of the Prime Minister in order that instructions and remedies during the situation can [be] achieve[d] in an integral, expedient and efficient manner.

The prescription of all or part of powers and duties of Ministers under paragraph one as powers and duties of the Prime Minister shall be in accordance with a Notification issued by the Council of Ministers.

The Prime Minister shall have the power to appoint competent officials to perform duties under this Emergency Decree and to carry out functions under laws which have been transferred to the powers and duties of the Prime Minister under paragraph one. A person appointed as a competent official shall be deemed to have the powers under such law. In this regard, the Prime Minister may authorise any governmental agency or competent official under such law to continue to exercise existing functions, provided that the exercise of functions shall be in accordance with the rules laid down by the Prime Minister.

In a case where the Prime Minister appoints a civil servant, a police officer or a military officer holding a position not lower than Director-General, Police Commander in Chief, Commander General or the equivalent thereof as a competent official and prescribed as a Chief Official responsible for remedying the emergency situation in an area and to have charge and control over other officials and competent officials in this regard, the exercise of functions by relevant governmental agencies and officials, including [the] competent official, shall comply with instructions of the Chief Official, except for the exercise of military functions, which must be in accordance with by-laws, rules and Regulations concerning the use of military force, provided that this must be consistent with guidelines stipulated by the Chief Official.

In the case of necessity, the Council of Ministers may set up an ad-hoc Special Task Force to provisionally exercise functions under this Emergency Decree until the Declaration of Emergency Situation has been annulled.

The Prime Minister may authorise a Deputy Prime Minister or one or more Ministers to exercise powers under paragraph one, paragraph three or paragraph four on his/her behalf or may entrust such persons as supervisors for the

exercise of functions by the relevant governmental agencies, competent official under paragraph three, Chief Official under paragraph four and the agency under paragraph five and shall be deemed to be the superior official of the Chief Official, government officials and relevant competent officials.

Section 8. For the benefit of coordinating the exercise of functions in an appropriate manner and consistent with the circumstances of the situation and well-being of the people in the area [in] which an Emergency Situation has been declared, the Prime Minister or the designated Minister may issue an order appointing a group of persons or a person as an adviser for the exercise of functions of the competent official or as an assistant to the competent official in the exercise of functions under this Emergency Decree.

A person appointed under paragraph one shall acquire protection to the same extent as in the exercise of functions by a competent official within the scope of the appointed functions.

Section 9. In the case of necessity in order to remedy and promptly resolve an emergency situation or to prevent the worsening of such situation, the Prime Minister shall have the power to issue the following Regulations:

- (1) to prohibit any person from departing from a dwelling place during the prescribed period, except with the permission of a competent official or being an exempted person;
- (2) to prohibit the assembly or gathering of persons at any place or the commission of any act which may cause unrest;
- (3) to prohibit the press release, distribution or dissemination of letters, publications or any means of communication containing texts which may instigate fear amongst the people or is intended to distort information which misleads understanding of the emergency situation to the extent of affecting the security of state or public order or good moral of the people both in the area or locality where an emergency situation has been declared or the entire Kingdom;
- (4) to prohibit the use of routes or vehicles or prescribe conditions on the use of routes or vehicle;
- (5) to prohibit the use of buildings or enter into or stay in any place;
- (6) to evacuate people out of a designated area for the safety of such people or to prohibit any person from entering a designated area.

Regulations under paragraph one may prescribe a time condition for the compliance of Regulations or conditions for the exercise of functions by the competent official, or authorise a competent official to designate an area and additional details, so as not to perform any act which causes unreasonable hardship to the people.

Section 10. For the benefit of promptly resolving the problems in the emergency situation area, the Prime Minister may authorize a competent official appointed as a Chief Official under section 7 paragraph four to exercise the powers to issue the Regulations under section 9 on his/her behalf. However, upon the exercise of such powers, a report shall forthwith be submitted to the Prime Minister and if the Prime Minister does not issue Regulations on the same subject matter within forty-eight hours as from the issue of such Regulations by the competent official, such Regulations shall be cease to be in force.

Section 11. In the case where an emergency situation involves terrorism, use of force, harm to life, body or property, or there are reasonable grounds to believe that there exists a severe act which affects the security of state, the safety of life or property of the state or person, and there is a necessity to resolve the problem in an efficient and timely manner, the Prime Minister, upon the approval of the Council of Ministers, shall have the power to declare that such emergency situation is a serious situation, and the provisions of section 5 and section 6 paragraph two shall apply *mutatis mutandis*.

Upon a declaration under paragraph one, in addition to powers section 9 and section 10, the Prime Minister shall also have the following powers:

- (1) to issue a Notification that a competent official shall have the power of arrest and detention over persons suspected of having a role in causing the emergency situation, or being an instigator, a propagator, a supporter of such act or concealing relevant information relating to the act which caused the emergency situation, provided that this should be done to the extent that is necessary to prevent such person from committing an act or participating in the commission of any act which may cause a serious situation or to foster cooperation in the termination of the serious situation;

- (2) to issue a Notification that a competent official shall have the power to summon any person to report to the competent official or to give an oral statement or submit any documents or evidence relating to the emergency situation;
- (3) to issue a Notification that a competent official shall have the power to seize or attach arms, goods, consumer products, chemical products or any other materials in the case where there are reasonable grounds to suspect that such objects have been used or will be used to commit or support an act which causes an emergency situation;
- (4) to issue a Notification that a competent officials shall have the power to issue a warrant for the search, removal, withdrawal or demolition of buildings, structures or obstructions as necessary for the exercise of functions in order to promptly terminate a serious situation where a delay might render the situation beyond control;
- (5) to issue a Notification that a competent official shall have the power to issue an order to inspect letters, books, printed matters, telegraphic transmissions, telephone communications or any other means of communication as well as to cancel or suspend any contact or communication in order to prevent or terminate the serious incident provided that the rules prescribed in the law on special investigation are complied with *mutatis mutandis*;
- (6) to issue a Notification the prohibition of any act or any instruction to perform an act to the extent that is necessary for maintaining the security of the state, the safety of the country or the safety of the people;
- (7) to issue a Notification that a competent official shall have the power to issue an order to prohibit any person from leaving the Kingdom where there are reasonable grounds to believe that the departure from the Kingdom will affect the security of the state or the safety of the country;
- (8) to issue a Notification that a competent official shall have the power to instruct an alien to leave the Kingdom in the case where there are reasonable grounds to believe that such person is a supporter in causing the emergency situation, provided that the law on immigration shall apply *mutatis mutandis*;
- (9) to issue a Notification that the purchase, sale, use or possession of any arms, goods, medical products, consumer products, chemical products or any equipment which may be used for causing unrest or terrorism shall be reported to or permitted by the competent official or comply with any conditions set by the Prime Minister;
- (10) to order the use of military force in order to assist administrative officials or police officers in terminating the serious situation or controlling the situation so as to promptly secure order, provided that the performance of functions by military officers shall be made pursuant to identical powers and duties of a competent official under this Emergency Decree, whereas the scope of the use of such powers and duties of the military shall be in accordance with the conditions and time condition prescribed by the Prime Minister but shall not exceed the powers under martial laws in the case where martial laws apply.

Upon the termination of the serious situation under paragraph one, the Prime Minister shall issue a Notification to annul the Notification under this section forthwith.

Section 12. In arresting and taking suspected persons into custody under section 11(1), the competent official shall apply for leave of a court of competent jurisdiction or the Criminal Court. Upon obtaining leave of the court, the competent official shall be empowered to arrest and take the suspected persons into custody for a period not exceeding seven days. The suspected persons shall be taken into custody at a designated place which is not a police station, detention centre, penal institution or prisons and shall not be treated as a convict. In case where it is necessary to continue the detention in order to remedy the emergency situation, the competent official shall apply for the leave of the court to extend such detention period by seven days at a time, provided that the total period shall not exceed thirty days. Upon the expiration of such period, if the detention is still required, the competent official shall proceed under the Criminal Procedure Code.

In proceeding under paragraph one, the competent officials shall file a report on the arrest and detention of such suspected persons for submission to the court issuing the order under paragraph one. A copy of such report shall be deposited at the office of the competent official so that relatives of the suspected persons may access such reports for the entire duration of such detention.

The provisions on the procedures governing the issue of a warrant under the Criminal Procedure Code shall apply *mutatis mutandis* to the application for leave of the Court under paragraph one.

Section 13. If an object or equipment stipulated in a Notification under section 11(9) is a communication device or a part thereof, the Prime Minister may issue a Notification to implement such measure throughout the Kingdom or in any other areas not prescribed in a Declaration of Emergency Situation.

Section 14. A Regulation, Notification and order issued under section 5, section 7, section 8, section 9, section 11 and section 15 shall also be published in the Government Gazette upon coming into force.

Section 15. A competent official or a person having identical powers and duties to a competent official under this Emergency Decree shall be a competent official under the Penal Code and shall have the powers and duties of an administrative official or police officer under the Criminal Procedure Code as prescribed by the Prime Minister.

Section 16. A Regulation, Notification, order or an act under this Emergency Decree shall not be subject to the law on administrative procedures and the law on the establishment of Administrative Court and Administrative Court Procedure.

Section 17. A competent official and a person having identical powers and duties as a competent official under this Emergency Decree shall not be subject to civil, criminal or disciplinary liabilities arising from the performance of functions for the termination or prevention of an illegal act if such act was performed in good faith, non-discriminatory, and was not unreasonable in the circumstances or exceed[ed] the extent of necessity, but [this] does not preclude the right of a victim to seek compensation from a government agency under the law on liability for wrongful act of officials.

Section 18. Any person who violates a Regulation, Notification or order issued under section 9, section 10, section 11, or section 13 shall be liable to imprisonment for a term not exceeding two years or to a fine not more than forty-thousand baht, or to both.

Section 19. The Prime Minister shall have charge and control of the execution of this Emergency Decree.

Countersigned by:

Pol. Lt. Col. Thaksin Shinawatra, Prime Minister

Note: Whereas the law on Public Administration in Emergency Situation has been in force for a considerable period of time, certain provisions could not be applied to achieve an expedient remedy against a wide range of situations which affect the security of State; and owing to the fact that at present there are problems pertaining to the security of the State which affect the independence and territorial integrity of the State and acts which cause public disorders in the country, endangering life or causing distress to the extent that interferes with peaceful living of the people, which cannot be resolved by an ordinary form of public administration....there is a need to enact special measures for the administration of emergency situation to maintain the security of the State and the people's safety to resume promptly to normal life. Therefore, for the purpose of maintaining national or public safety or averting public calamity, it is necessary to issue this Emergency Decree.

* Government Gazette vol. 122, part 58a, 16 July B.E. 2548 (2005)

APPENDIX D

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with over 110 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board -- which includes prominent figures from the fields of politics, diplomacy, business and the media -- is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is chaired by Lord Patten of Barnes, former European Commissioner for External Relations. President and Chief Executive since January 2000 is former Australian Foreign Minister Gareth Evans.

Crisis Group's international headquarters are in Brussels, with advocacy offices in Washington DC (where it is based as a legal entity), New York, London and Moscow. The organisation currently operates fifteen field offices (in Amman, Belgrade, Bishkek, Dakar, Dushanbe, Islamabad, Jakarta, Kabul, Nairobi, Pretoria, Pristina, Quito, Seoul, Skopje and Tbilisi), with analysts working in over 50 crisis-affected countries and territories across four continents. In Africa, this includes Angola, Burundi, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Liberia, Rwanda, the Sahel region, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Indonesia, Kashmir, Kazakhstan,

Kyrgyzstan, Myanmar/Burma, Nepal, North Korea, Pakistan, Tajikistan, Turkmenistan and Uzbekistan; in Europe, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kosovo, Macedonia, Moldova, Montenegro and Serbia; in the Middle East, the whole region from North Africa to Iran; and in Latin America, Colombia, the Andean region and Haiti.

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November 2005

APPENDIX E

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