INTERNATIONAL
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LEGAL MEMORANDUM 1

'VOCATIONAL TRAINING CAMPS'
AND APPLICABLE INTERNATIONAL STANDARDS

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® Legal memorandum – 'Vocational Training Camps' and Applicable International Standards, October 2007

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LEGAL MEMORANDUM:
'VOCATIONAL TRAINING CAMPS' AND APPLICABLE INTERNATIONAL STANDARDS

INTRODUCTION

This legal memorandum, prepared by the International Commission of Jurists (ICJ), assesses the compatibility of 'vocational training camps' in the southern border provinces of Thailand (Yala, Pattani and Narathiwat) with rule of law principles and international human rights law and best practices around the world.

The ICJ is concerned that the use of 'vocational training camps' amounts to unlawful and arbitrary detention. The ICJ's experience of other conflicts around the world suggests that arbitrary detention is likely to alienate local communities and increase perceptions of injustice; making the Government's efforts to reduce violence and to build confidence in local communities more difficult in the long-term. Resort to extra-judicial procedures, rather than using and strengthening existing legal measures, both weakens the rule of law and may ultimately undermine the ability of the Thai authorities to enforce law and order.

The ICJ unreservedly condemns the appalling acts of violence carried out by insurgents in the South, which clearly amount to serious crimes. The ICJ does not underestimate the seriousness of the violence in the South or the challenges faced by the security forces. However, the ICJ believes that those suspected of carrying out bombings, shootings, beheadings or other serious crimes should be prosecuted and brought to justice for these acts, rather than temporarily held in training camps. Under international law states are obliged to conduct prompt, effective, impartial and independent investigations into human rights abuses and bring the perpetrators to justice.[1]

'VOCATIONAL TRAINING CAMPS'

Since the military announced its "Battle Plan for the Protection of the Southern Lands" on 18 June 2007, there have been mass arrests of mostly young men in areas of incidents related to the unrest in the three Southern Border Provinces.[2] Arrest and detention has been carried out using powers under the Martial Law Act B.E. 2483, which does not require court warrants and allows detention for up to seven days. After seven days, detainees have been held for a further 30 days under the Emergency Decree. After this 37-day period, rather than being released or charged with a criminal offence in accordance with Thai criminal law, persons have been further detained in three military camps outside the southern border provinces.

As of 8 October 2007, over 300 detainees were reportedly being detained in three military camps: the Vipawadee Rangsit Army Camp in Surat Thani Province, the Rattana-Rangsan Army Camp in Ranong Province, and the Khet Udomsak Army Camp (or 'Tasae Center') in Chomporn Province. According to official explanations, the detainees in these three camps are voluntarily taking part in four-month "Vocational Training" Programmes

("training camps"). About 200 of these men have been in the training camps since late July 2007. Counting their initial detention under emergency laws, they have been in military detention for over three months. Others have been in the training camps since August 2007.

Officials claim the training camps aim to give job opportunities to the participants, to keep communities safe by removing likely perpetrators of violence, and allow the military to observe likely insurgents so they can be monitored upon release. In practice it appears the camps have been used as a form of extended preventive detention to avoid the time limits for detention under the Emergency Decree. On 3 October 2007, a number of detainees from across the three training camps submitted letters to camp commanders requesting their release: the requests were denied.

ARBITRARY DETENTION

The 'vocational training camps' are markedly similar to, if not simply an extension of, the "citizens improvement programmes" or "peace-building schools" that have been used in the South since at least 2006. In an earlier legal memorandum submitted to the Government of Thailand in July 2007, the ICJ concluded that these programmes amounted to arbitrary detention and were contrary to international law.[3] Similarly, the ICJ considers 'vocational training camps' to be incompatible with international law, in particular Article 9 paragraph 1 of the International Covenant on Ciil and Political Rights ('ICCPR'), to which Thailand has been a party since 1996.

Article 9 (1) provides that:

> "Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law."

There is therefore a legal presumption that persons shall have the right to liberty: this is one of the most fundamental of all human rights, which must be carefully respected and protected. It cannot be assumed, as is often suggested or implied, that all detainees are guilty of being insurgents in order to justify detention at training camps. Everyone has the right to be presumed innocent until proved guilty according to law.[4] This is a fundamental tenet of international human rights law; civilian courts, not the military, should determine the guilt or innocence of suspected insurgents.

Article 9 (1) ICCPR provides only two permissible restrictions on the right to liberty:

First, the denial of liberty must be based on grounds and procedures established by law. The law must therefore state clearly the permissible grounds for detention. Normally law enforcement officials should only arrest or detain people because they are suspected of having committed a criminal offence under the criminal law. They should be treated as a criminal suspect from the moment of arrest, in accordance with the Thai Criminal Procedure Code, and charged and tried before an ordinary criminal court or released. Alternatively, if a person is

preventively detained under the provisions of the Emergency Decree, to prevent a possible crime being committed, then the procedures of the Emergency Decree should be followed, as well as the additional checks and balances provided in international law and standards. Neither the Criminal Procedure Code nor the Emergency Decree gives express legal powers to the Thai authorities to detain someone against their will at training camps.

Second, the law itself and the enforcement of the law must not be arbitrary.[5] Arbitrariness does not just mean against the law; it is broader, including elements of inappropriateness, injustice and lack of predictability.[6] The United Nations Human Rights Committee has stated that the right not to be subjected to arbitrary arrest and detention applies to all deprivations of liberty; including where detention is for "educational purposes",[7] which would include notions such as 'vocational training', 'rehabilitation', 'peace-building' and the like.

The ICJ considers that the use of 'vocational training camps' is in reality a form of arbitrary detention under the guise of training, rehabilitation or educational purposes. This form of detention has no justification in Thai law; this means there are no legal guidelines on the grounds of detention, no prescribed maximum period of detention, and no legal provision for judicial scrutiny of the initial decision to detain or to continue to detain. Detaining individuals outside the law is inherently unjust and inappropriate, and the absence of legal grounds for detention means the process lacks the kind of predictability required by international law.

IS 'VOLUNTARY' ATTENDANCE ARBITRARY DETENTION?

It has been suggested that attendance at training camps is voluntary and therefore it is not a form of detention. The ICJ does not believe that attendance at such camps is voluntary in practice. Firstly, attendance could only truly be voluntary if persons attend without coercion, threats, or fear of bad consequences if they refuse to attend. Secondly, attendance could only be voluntary if persons are genuinely free to leave such camps at any time. The ICJ understands this is not the case. In practice, it appears these camps are being used to compulsorily detain persons as an extension of detention powers in the Emergency Decree and in place of the ordinary criminal law.

If a person is to undergo some form of 'training' or 'rehabilitation', then it must be truly voluntary, unless it is imposed as part of a sentence for a criminal offence after a fair trial.[8] In a conflict situation like the South there will always be serious questions about whether attendance at military-run training camps is truly voluntary, as individuals may attend through coercion, threats, fear, or be transferred from police or military custody into such camps. Moreover, given the law enforcement role of the military and that the army is not trained in civilian education, it should be seriously questioned whether the army is the best institution to run such camps, if they are to exist at all.

Even if an individual does attend voluntarily, it does not follow they voluntarily submit to remain at a training camp as long as the authorities wish to keep them there. The right to liberty means the right not to be detained by the authorities unlawfully against a person's will. A key question must therefore be: are all persons truly free to leave the camp whenever they wish to do so? If the honest answer to this question is, no; then for all intents and purposes they are being detained.

The ICJ understands that some individuals have been granted permission to leave camps to pray or to make occasional home visits. This is welcome for humanitarian reasons, but it does not make detention lawful or voluntary. On the contrary, the fact that permission is required tends to show that freedom is being carefully controlled and that individuals are not in camps on a voluntary basis. Even prisoners serving jail sentences are sometimes permitted home visits for compassionate reasons; this temporary granting of 'liberty' does not affect the prisoner's overall status as a detainee.

GUARANTEES AGAINST ABUSES

Using 'vocational training camps', as opposed to detention prescribed by law, also denies detainees human rights protections guaranteed by international human rights law and standards, and those recognised in the Thai Criminal Procedure Code. There are a number of specific protections missing that would normally be part of the detention process, which increase the risk of torture or other ill-treatment in such training camps:

- The grounds and procedures for detention, and the length of detention, are not prescribed by law;
- The failure to automatically produce detainees before a court at any stage during the detention process to determine the lawfulness of detention;[9]
- The holding of detainees in military camps that are not subject to the normal laws and regulations or regularised procedures such as those governing prisons, police stations and other usual places of imprisonment;[10]
- The lack of obligation to inform detainees of their right to legal assistance;[11]
- The lack of a formal requirement to allow family visits (although the ICJ understand these have been allowed in practice);
- The absence of any routine medical examination in the course of detention, particularly at the beginning and end.[12]

In short, the usual checks and balances necessary to protect detainees against the risk of ill-treatment are missing.

HABEAS CORPUS

Article 9 (4) of the ICCPR provides that any detained person is entitled to take proceedings before a court, in order for the court to decide without delay on the lawfulness of detention; this is known as the right to *habeas corpus*.[13] It applies to all persons arrested or detained for whatever reason, and it cannot be suspended or derogated from, even during a state of emergency.

Prompt judicial scrutiny helps to ensure that the detention is lawful and necessary, and provides a vital safeguard against torture or other ill-treatment and enforced disappearance. It allows the judge to physically see the detainee and any noticeable signs of ill-treatment or hear allegations made by the detainee. Only in the most extreme situations when it is physically impossible to access a court, such as when the judiciary collapses because of an emergency, could it ever be justified to delay the speed with which a detainee is brought before a judge. This is not the situation in the South of Thailand, where the courts are functioning and active. In any event, any suspension of this important right beyond 48 hours would be hard to justify.[14]

Those detained in 'vocational training camps' must be allowed to exercise this important right, which is recognised in the Constitution of Thailand.[15] It should be possible to use the right to *habeas corpus* without limitation or restriction.[16] Prolonged or delayed *habeas corpus* proceedings are also considered incompatible with Article 9 of the ICCPR.[17] For this remedy to be effective the detainee must be brought before the Court promptly, have access to a lawyer of their choice, to consult with their lawyer in private and be represented in court by that lawyer.[18]Where access to a lawyer is denied to the detainee or restricted, third parties with a legitimate interest should be allowed to bring legal actions for and on behalf of the detained person.

State of Emergency

There has been a state of emergency in the southern border provinces since 19 July 2005, renewed at three-monthly intervals. However, even during a state of emergency a government cannot arbitrarily detain people or deny detainees their legal rights during detention, including the right to *habeas corpus*.[19] The law must state clearly the permissible grounds for any detention and provide legal guarantees against abuses. The ICJ has consistently expressed its concerns about sweeping emergency powers contained in the Emergency Decree applied in the South. Yet, even the broad wording of the Emergency Decree allows detention without charge for only a maximum of 30 days. Those detained in 'vocational training camps' have already been detained outside the law for over two months, and it is envisaged they will be held for up to four months, without any checks and balances on the legality or conditions of detention, such as those required by international law even in emergency situations.

CONCLUSIONS

- Those guilty of serious criminal offences in the South should be charged and brought to justice after a fair and public hearing, and not temporarily detained outside the law in 'vocational training camps'.

- 'Vocational training camps' or other similar programmes amount to unlawful and arbitrary detention, and are incompatible with Thailand's international obligations under Article 9 (1) ICCPR.

- Attendance at 'vocational training camps' cannot be considered voluntary unless persons are genuinely free to refuse to attend or to leave without coercion, threats or fear of other bad consequences.

- The use of arbitrary detention is not justified and represents an erosion of the rule of law. It takes detainees outside the normal legal system and creates the pre-conditions for serious human rights abuses to occur; such as, unlawful deprivation of liberty, torture and cruel, inhuman and degrading treatment, and enforced disappearances.

- All those held in 'Vocational training camps' must be informed of their right to legal assistance and allowed to exercise their right to *habeas corpus* by taking legal proceedings before a court to decide without delay on the lawfulness of detention.

RECOMMENDATIONS

1. The Government should give significantly greater resources and emphasis on successful and fair criminal prosecutions against all perpetrators of violence in the South.

2. The Government should stop the practice of arbitrarily detaining individuals in 'vocational training camps' or other similar programmes.

3. All persons detained at 'vocational training camps' in the South should be immediately released. Where there is genuine evidence of a criminal offence, suspects should be charged under the ordinary criminal law and brought immediately before a judge to determine the legality of detention.

4. The ICJ supports the recommendation of the National Reconciliation Commission (NRC) that "the law must be strictly observed while the suspect is in custody". All those detained, for whatever purpose, must be entitled to legal guarantees against abuses; such as the right to be informed of the reason for detention, to be brought before a judge promptly on arrest and to periodic review of detention, the right of access to a lawyer within 24 hours of arrest, and the right of access to family, in line with Thai law and international standards.

5. The Government should carefully review its overall policy of detentions in the South and ensure the justice process is in strict accordance with Thai law and international law and standards. The ICJ supports the NRC recommendation that this is of "utmost importance in building confidence and trust in the justice system on the part of citizens in the southern border provinces".

[1] See e.g. Article 2 ICCPR and UN Human Rights Committee, General Comment No. 31 (Nature of the General Legal Obligation Imposed on States Parties to the Covenant), paras. 8 and 15; the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005; and the Updated set ofprinciples for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, Principle 19.

[2] http://www.southpeace.go.th

[3] ICJ *Legal Memorandum: The Implementation of Thailand's Emergency Decree*, July 2007, pp.14 -19.

[4] Article 14 (2), ICCPR.

[5] Arbitary detention is also considered to be prohibited by customary international law and often qualified as a *jus cogens* rule, i.e. a rule belonging to a restricted set of international norms from which no derogation is permitted. See e.g. *Restatement (Third) of the Foreign Relations Law of the United States*.

[6] UN Human Rights Committee, Case of *van Alphen v The Netherlands* (305/88) 23/7/90, para. 5.8.

[7] See UN Human Rights Committee, General Comment 8, para. 1.

[8] Article 10 (3), ICCPR.

[9] Article 9 (3), ICCPR. See also UN Human Rights Committee, Concluding Observations on *Thailand*, CCPR/CO/84/THA (13), 28 July 2005 (Advanced Unedited Version): "[a]ny detention without external safeguards beyond 48 hours should be prohibited".

[10] See e.g. UN Human Rights Committee, General Comment No 20: concerning prohibition of torture andcruel treatment or punishment, para 11.

[11] Article 14 (3) (d), ICCPR.

[12] Principle 24, UN Body of Principles.

[13] *Habeas corpus* is a Latin term meaning literally "produce the body". In law it means to bring a party before a court or judge to decide whether the person is detained lawfully and to release the person if they are detained unlawfully

[14] Concluding Observations of the UN Human Rights Committee on *Thailand*, CCPR/CO/84/THA (13), 28 July 2005 (Advanced Unedited Version).

[15] Constitution of the Kingdom of Thailand 2007, Article 32.

[16] Concluding Observations of the Human Rights Committee: *Japan*, CCPR/C/79/Add.102, 19 November 1998, para. 24.

[17] Concluding Observations of the Human Rights Committee: *Dominican Republic*, CCPR/CO/71/DOM, 26 March 2001.

[18] See e.g. Article 14 (3) (b) and (c) ICCPR, and Principles 17 and 18, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988. See also UN Human Rights Committee Case of *Berry v Jamaica* (330/88), 7/4/94, para. 11.1, linking access to legal representation with enjoyment of Article 9(4).

[19] The UN Human Rights Committee and other international human rights bodies have consistently stated that *habeas corpus* must be provided even in times of a public emergency threatening the life of a nation: See e.g. UN Human Rights Committee, General Comment No. 29, paras. 14 and 16.

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