

Thailand

Open Letter to Prime Minister Thaksin Shinawatra

Dear Prime Minister,

Amnesty International welcomes your government's establishment of a commission to investigate events of 25 October 2004 that led to the deaths of at least 87 protestors in Tak Bai, Narathiwat Province. We also welcome your stated commitment to prosecute any state officials suspected of wrongdoing in this context.

Amnesty International urges you to ensure that internationally established principles for the independent, impartial, competent and effective investigation of alleged human rights violations are reflected in the investigation, and the victims of alleged violations are guaranteed access to judicial remedies, in accordance with Thailand's domestic and international law obligations. In order to ascertain the truth about events at Tak Bai on 25 October 2004, Amnesty International urges that measures in the *United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Summary and Arbitrary Executions*, and in the *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Summary and Arbitrary Executions*, are fully reflected in the work of the commission.

Amnesty International has expressed concern on a number of occasions in the past at the use of excessive force against demonstrators; torture of detainees; and the impunity enjoyed by state officials for alleged human rights violations in Thailand. In order to protect against impunity and against future human rights violations, the organization recommends that events at Tak Bai and other alleged serious human rights violations are independently investigated and the findings made public, in line with the principles detailed below; and that your government actively pursues the prosecution of those suspected of wrongdoing, provides compensation and restitution to the victims of human rights violations and their families, and adopts any recommendations made following an independent investigation for institutional reform to safeguard human rights in the future.

Amnesty International appreciates the grave threat to law and order currently presented by the security situation in the south, and condemns the deliberate attacks on civilians by armed groups there. The organization however urges you to take steps to ensure that security forces uphold human rights in their response to the situation. Amnesty International notes reports of your government's plans to create anti-riot units in the south and to use negotiation teams in the future policing of demonstrations. Amnesty International urges that your government fully review training programmes and operational procedures for both

police and the army to ensure that there are clear regulations and instructions requiring minimum and proportionate use of force and only when non-violent alternatives are ineffective, in line with international human rights standards on the conduct of security forces, including the *UN Code of Conduct for Law Enforcement Officials*, the *UN Basic Principles on the Use of Force and Firearms*, the *UN Standard Minimum Rules for the Treatment of Prisoners*, the *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, and international legal obligations under the *International Covenant on Civil and Political Rights (ICCPR)*.

Amnesty International notes that your government has stated that the commission will investigate whether procedures used to police the demonstration, disperse crowds, and to detain and transport suspected protestors were in accordance with domestic law and international standards. Amnesty International urges that the commission, in addition to specifically examining allegations of the excessive use of force and of torture and other cruel, inhuman or degrading treatment, examines allegations that at least ten individuals are suspected to have “disappeared” after the demonstration.

Independence and Impartiality

Amnesty International urges you to ensure that the commission can demonstrate its formal independence from the authorities and governmental pressure and influence. International principles recommend that an independent commission include among its members persons nominated by independent non-governmental bodies, such as the country’s bar and medical associations.

The commission should also have impartial and expert legal counsel.

Powers and resources

Amnesty International urges that all necessary resources and powers, including adequate time for a thorough investigation, are made available to the commission.

In particular, the commission should have the power to summon witnesses, and be given the authority to compel testimony under legal sanction and to order the production of documents, including government and medical records. The commission should be empowered to recommend legal sanction for those, including state officials, who do not comply when asked for evidence or documentation. Other bodies conducting independent inquiries into the deaths should also be able to submit relevant information to the commission. The commission should be able to call on technical advisors in the fields of forensic science, ballistics and pathology.

The commission should have the power to recommend prosecution of suspected offenders. The case of any person found by the investigation to have committed human rights violations should be promptly submitted to the prosecution authorities for investigation and prosecution. Amnesty International notes comments in the press by your government suggesting that the task of the commission is to uncover facts relating to the incident and not to name individuals suspected of breaking the law. Should it be the case

that the commission does not have the power to recommend prosecution of suspected offenders, Amnesty International strongly urges that this power be added to their remit.

Consultation of families

Families of the deceased and their legal representatives must be informed of, and have access to, hearings and information relevant to the investigation of the death of their relatives, and should also be entitled to present other evidence themselves.

Reporting alleged human rights violations

There should be a clear and publicly advertised procedure for persons wishing to contact the commission with complaints, and mechanisms for people to either testify or submit written complaints. Amnesty International notes press reports that local police have refused to document complaints from relatives of missing protestors, and urges your government to ensure that people are able to report alleged human rights violations to both the commission and to police.

Forensic evidence

The commission should have access to the results of any inquests, autopsies and post-mortem examinations of those who died during the demonstration and during transportation in army vehicles. It should review these results and ascertain whether such investigations were impartially and thoroughly conducted. It is paramount that the commission has access to records documenting all injuries to the deceased and others injured during the events of the day, including any evidence of torture or other cruel, inhuman or degrading treatment.

Amnesty International notes that forensic examinations of the 78 persons initially reported to have suffocated to death in army transport have been conducted, but does not have information about whether comprehensive autopsies have taken place. According to international best practice in cases of unanticipated death, bodies should not be buried until an adequate autopsy is carried out. If the commission is not satisfied that such an autopsy has been carried out on the bodies of the deceased who have now been buried, or requires further investigation, the commission should be able to request the exhumation and autopsy of the deceased's body, with the consent of the relatives of the deceased and with respect for religious tradition.

Protection of witnesses and members of the commission from retribution and intimidation

Victims, witnesses and those conducting this investigation must be protected from reprisal, including ill-treatment and intimidation, for participating in the investigation. Amnesty International therefore recommends that the commission has the power to order measures to give witnesses, including protestors who have been detained or released; members of the press, families of victims and any others involved in the investigation, protection from any such threat. Such measures should include the removal of anyone

potentially implicated in alleged human rights violations from a position of control or power over those conducting the inquiry, witnesses and their families.

Amnesty International notes media reports of witnesses to the demonstration, including suspected protestors and members of the media, being subjected to treatment that could be construed as harassment or intimidation, including by being filmed and arbitrarily detained by members of the security forces. Detainees who spoke to the media on their release on 30 October 2004, were reportedly filmed by armed members of the security forces as they gave interviews to journalists. Members of the media were reportedly summoned by the police's Crime Suppression Division to Narathiwat police station on 4 November 2004 for a press conference, and then subsequently questioned for four hours, without access to lawyers. They were presented with a summons for them to surrender video footage and photo documentation of the demonstration at Tak Bai. Amnesty International urges that your government take measures to investigate these reports of possible intimidation, to make public assurances that it will employ all possible means of protecting witnesses' safety before, during and after the investigation, and to implement such means of protection.

Publication of a detailed report

Amnesty International welcomes your government's commitment to make the report of the investigation's findings public, and to this end, recommends that your government give the commission the authority to make the report public. The report should detail the methods and procedures used to evaluate evidence; the commission's conclusions and recommendations; and describe in detail specific events that were found to have occurred and the evidence on which such findings were based. The report should be made available for use as evidence in any subsequent criminal or civil proceedings. In addition, Amnesty International urges that the government publicly reply to the report and indicate the steps which will be taken in response to its findings and recommendations.

Suspension of officials suspected of involvement in alleged human rights violations.

Amnesty International notes that the Commander of the Fourth Army has been transferred. The organization recommends that any official suspected of involvement in alleged human rights violations should be suspended from active duty, pending the outcome of this and any subsequent criminal investigation.

Reparations to the victims of human rights violations

Amnesty International also urges that the victims of human rights violations, including families and dependants of those people found to have been extrajudicially executed, be granted full reparations within a reasonable period of time. Such reparation includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.

Need for government action on other recent allegations of human rights violations

Amnesty International renews calls for independent investigations to be instituted into the significantly high number of killings during the “war on drugs” in Thailand in 2003, and into deaths that resulted from security forces’ suppression of suspected insurgents in the South on 28 April 2004. In relation to the latter, the government appointed fact-finding commission looked only into the deaths of 32 suspected insurgents at Krue Se Mosque on 28 April 2004, and did not include 75 killings in other locations on that day. The organization further recommends that a full report of the findings of this commission is made public. Amnesty International notes the commission’s apparent finding that excessive force was used by security forces. Amnesty International also urges your government to ensure that those responsible are brought to justice, and to provide information on what steps have been taken to implement the fact-finding commission’s recommendations.

Yours sincerely,

Irene Khan
Secretary General