

MODELS OF HUMAN RIGHTS AND COUNTER-TERRORISM: DISABLING THE TERROR FRANCHISE IN SOUTHERN THAILAND

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ABSTRACT

This paper fills the gap in the literature through a conceptual analysis of the BRN Thai extremist group's potential role in global terrorism and evaluating current counter-terrorism measures against the group. This article argues that the most effective causal approach to counter international jihadist terrorism is a bottom-up strategy applying causal solutions to domestic sub-state extremist groups to close down the local terror franchise, instead of a top-down strategy focusing causal efforts on already polarized global terrorist groups. This method has the manifold benefits of reducing networks of local extremism while also circumventing the reputational capitol on which international terrorist groups depend for recruitment purposes. Using this approach, this paper argues that Thailand is well situated for the application of causal solutions because of BRN's history of cooperative efforts with the Thai government, BRN's traditional reluctance to make common cause with global jihadist groups, and because calls for the reform of living conditions and against unfair treatment in the Deep South provide potential for non-violent and practical solutions to the insurgency between the Malay Muslims and the broader Thai polity to the north. Specifically, these opportunities in Thailand can be realized through myriad political solutions, economic and cultural sustainability, closing impunity gaps of past bad government actions and, most significantly, greater degrees of internal self-determination.

ABSTRACT	243
INTRODUCTION	244
BACKGROUND.....	248
SUB-STATE NEXUS TO INTERNATIONAL JIHADISM.....	250
HISTORY	256
DOMESTIC RELIGIOUS LAW	259

COUNTER-TERRORISM LAW.....	265
OTHER CAUSAL ISSUES.....	266
<i>Strategic Policy</i>	266
<i>Economic situational factors</i>	267
<i>Political situational factors</i>	270
CONCLUSION.....	275

INTRODUCTION

There are many models for counter-terrorism. The so-called War on Terror has embraced a military model and has been favoured by many states since 9-11.¹ The definitions of terrorism accepted by most states involve a common elemental approach defining it as a criminal offense, which implies a law enforcement/criminal justice model. The model accepted by the UN General Assembly, at least in part, uses a politico-sociological approach and implies a causal model designed to relieve the underlying misery that causes terrorist level extremism.² The former two approaches rely on a coercive theory of law compliance,³ while the causal model relies upon the legitimacy theory.⁴ Certainly, no approach has worked adequately despite politically infused claims to victory and ebbs and tides in local or regional violence. Yet the causal approach, as a less reactionary and more complex and proactive model, has failed to be thoroughly exploited.

Under the umbrella of causation there are different subsets such as economic theory hypothesizing that greater economic prosperity of “at-risk groups”⁵ will ensure group self-policing as a matter of self-interest.⁶ A more holistic theory of causal counter-terrorism is a social psychology sub-model that scrutinizes the

¹ Ryan Swan, *The Future of the War on Terror*, 2019 ILL. L. REV. 91, 91 (2019).

² See G.A. Res. 3034 (XXVII) (Dec. 18, 1972); see also G.A. Res. 60/288 (Sept. 20, 2006) (outlining the General Assembly’s approach to dealing with international terrorism).

³ Mark D. Kielsingard & Tam Hey Juan Julian, *Stopping Terrorism at its Source: Conceptual Flaws of the Deterrence-Based Counterterrorism Regime and Committing to a Preemptive Causal Model*, 26 J. L. & POL’Y 487 (2018).

⁴ *Id.*

⁵ Groups vulnerable to radical extremism.

⁶ See Kielsingard & Tam, *supra* note 3 (analyzing the psycho-social causes of terrorism and identifying societal insecurity drivers).

psychology of group extremism to specifically articulate and correct underlying social uncertainty in at-risk groups, which causes violent extremism.⁷ This uncertainty is powered by conditioning factors perceived as unfair and perverse to group self-identity emanating from extraneous majoritarian societal sources.⁸ This methodology must be scientifically rigorous by evaluating situations for the most weighty conditioning/causal factors driving extremism.⁹ It must remain current to the often changing situations on the ground and solutions must be locally tailored.¹⁰

Drawing upon the requisite of local solutions, another subset to the causal counter-terrorism model can be styled as a franchise approach, or a bottom-up strategy. Eliminate the franchisee from the equation and the franchisor brand is crippled or destroyed. Terrorist organizations have traditionally been categorized into, *inter alia*, sub-state and international terrorist groups.¹¹ For the purposes of this paper, international terrorist groups are defined as large organizations dedicated to violent international jihadism in accordance with the Salafist ideology.¹² These organizations consist principally of the ISIS and al Qaeda groups and can be described as existential threat organizations with pervasive enemies, usually identified as Israel, western industrialized states and their allies. Sub-state organizations, in this context, comprise of smaller defined national groups of extremist sharing some indicia of commonality with international jihadist groups but with largely (sometimes

⁷ Kielsingard & Tam, *supra* note 3.

⁸ Kielsingard & Tam, *supra* note 3, at 494–96.

⁹ The insecurity driver towards extremism has five aspects, i.e., economic, cultural/social, personal safety and political. See Kielsingard & Tam, *supra* note 3.

¹⁰ Mark D. Kielsingard & Tam Hey Juan Julian, *Autocatalytic Models of Counter-Terrorism in East and Southeast Asia: An International Comparative Analysis of China, Indonesia and Thailand*, 50 GEO. WASH. INT'L L. REV. 461 (2018); Kielsingard & Tam, *supra* note 3.

¹¹ U.N. Econ. & Soc. Council, Sub-Comm. on Promotion & Prot. of Human Rights, *Terrorism and Human Rights: Progress Report*, 11 U.N. Doc. E/CN.4/Sub.2/2001/31 (June 27, 2001); JOHN RICHARD THACKRAH, *DICTIONARY OF TERRORISM* 76 (2d ed. 2004).

¹² Daniel L. Byman, *Divisions within global jihad: A primer*, BROOKINGS (Oct. 2, 2017), <https://www.brookings.edu/blog/markaz/2017/10/02/divisions-within-the-global-jihad-a-primer/> [<https://perma.cc/B8LV-K3FR>]; See also, Michael R. Kelvington, *Global Salafi-Jihadism Ideology: The “Soft Power” of the Enemy*, INT'L INST. FOR COUNTER-TERRORISM (Mar. 25, 2019), https://www.ict.org.il/Article/2366/GlobalSalafi-Jihadism_Ideology#gsc.tab=0 [<https://perma.cc/KRU3-QN7Z>] (describing the driving force behind the Al-Qaeda and Islamic State terrorist networks as the global Salafi-Jihadist ideology).

exclusively) nationalistic agendas - seeking change in their own countries.¹³ The linkages of international jihadist and sub-state groups is of prime importance and parallels analogously to the franchisee/franchisor relationship of large businesses.

For terrorist organizations, this franchise relationship can be mutually beneficial. For the international jihadist group, it increases the number of allies on the ground for gathering intelligence, allows for the selection of some targets by sub-state groups—including western targets,¹⁴ provides opportunities for collaborative attacks, and creates a conduit for recruitment of new members and *ad hoc* foreign terrorist fighters. Most importantly perhaps, it also increases the prestige of the international terrorist brand where recruitment depends on reputational capital and is of crucial importance. On the other hand, for sub-state terrorist groups, such associations can benefit their training, financial capital, and popular legitimacy through coupling with the international jihadist brand.¹⁵ The benefits incumbent to these relationships create a competitive environment between the international jihadist groups to acquire exclusive franchises,¹⁶ which signals the importance of these alliances to the leadership of the international groups.

From a counter-terrorism perspective, these franchise associations are disastrous as they empower international jihadist groups and further radicalize sub-state terrorist organizations. However, in reviewing iterations of sub-state terrorist groups, there are significant departures in terms of goals, targets and methods which opens opportunities to sever the connections and figuratively bankrupt the franchise. A franchise causal methodology will

¹³ RICHARD J. KILROY, WILEY PATHWAYS THREATS TO HOMELAND SECURITY: AN ALL-HAZARDS PERSPECTIVE 180 (2008).

¹⁴ Boko Haram had adopted mass kidnapping in Nigeria. See JESSICA T. DARDEN, TACKLING TERRORISTS' EXPLOITATION OF YOUTH 4 (American Enterprise Institute 2019) (explaining how terrorist groups recruit and mobilize youth).

¹⁵ See Lijun Zhang, *Anti-Terrorism Alliance*, in CRITICAL PERSPECTIVES ON AL-QAEDA 155 (2006) (describing Al Qaeda Effect and how terror groups regard Al Qaeda as their role model); Zachary Abuza, *Tentacles of Terror: Al Qaeda's Southeast Asian Network*, 24 CONTEMP. SOUTHEAST ASIA 427, 428 (2002) (describing how domestic terror groups were able to benefit by linking up with Al Qaeda, an international terrorist group).

¹⁶ See, e.g., Bill Braniff & Assaf Moghadam, *Towards Global Jihadism: Al-Qaeda's Strategic, Ideological and Structural Adaptations since 9/11*, 5 PERSP. ON TERRORISM 36, 36 (2011) (describing the on again off again relationship the northern Nigeria terrorist group Boko Haram had with al Qaeda and ISIS, which has inspired locally based group to adopt a perspective of a global jihadist ideology).

therefore primarily focus efforts away from international jihadism (because it is radically polarized and largely immune to causal solutions), and toward localized sub-state terrorism which often has legitimate grievances with practical solutions. Addressing longstanding negative domestic conditioning factors will de-radicalize sub-state groups and sever their ties with international jihadist franchisors. Applying initiatives toward plausible solutions instead of existential threats, this counter-terrorism model can not only pointedly deter domestic radicalization, it can also diminish the reputational capital of international terrorist organizations to reduce their recruitment capabilities.

Yet, there is a paucity of literature on how to diffuse terrorist franchise relationships and address the connections in specific at risk areas where the causal model can be most effective. Indeed, since the UNGA first articulated a causal approach in 1972¹⁷ there has been a lack of practical or theoretical literature on how that approach would specifically be conducted. Instead, mainstream theory continues to focus on self-defeating deterrence models,¹⁸ grounded in coercive theory, as applied against global jihadist groups with consequential autocatalytic effect.¹⁹

As an exemplar, this paper considers the on-going insurgency in southern Thailand²⁰ to examine the causes of extremism, review it for economic theory and politico-socio-legal indicia, examine why the Malay Muslims have remained comparatively insular to efforts by international jihadist groups, review negative trends and identify how a causal model should look in a local situation. This paper concludes that there is a momentous gap in counter-terrorism initiatives as international jihadism can most effectively be reversed by targeting its local associated groups in accordance with localized imperatives. In Thailand, this means through the medium of political solutions/reforms, economic sustainability, closing impunity gaps of past bad government actions

¹⁷ See generally G.A. Res. 3034 (XXVII) at 119 (Dec. 18, 1972) (outlining the General Assembly's approach to dealing with international terrorism).

¹⁸ See EYAL T. COHEN, BROOKING INST. FOREIGN POLICY, PUSHING THE JIHADIST GENIE BACK INTO THE BOTTLE: HOW TO COUNTER THE ONGOING TERRORIST THREAT 8 (May 2019) (arguing that deterrence is an effective method for combatting Jihadist groups).

¹⁹ *Id.*

²⁰ See ARABINDA ACHARYA, WHITHER SOUTHEAST ASIA TERRORISM? 77-79 (2015) (giving the historical background for the on-going insurgency in southern Thailand).

and, most significantly, greater degrees of internal self-determination.²¹

This paper will first appraise the background and history of the Malay Muslims in southern Thailand, efforts at self-determination and trends in terrorist attacks, and the government's responses. It will then evaluate the religious and counter-terrorism laws in Thailand and their impact on boosting uncertainty in at-risk groups in the south. Thereafter, it will articulate other relevant causal issues, including economic and political conditioning factors, and conclude with practical reforms necessary for the dismantling of terrorism and the preclusion of the Malay Muslim terror franchise.

BACKGROUND

The recent history of terrorism in Thailand has consisted largely of sectarian fighting on the extreme southern border (near Malaysia), with conflict channelled along ethnic lines.²² The conflict emanates between the Malay Muslims in the south and the largely Buddhist polity throughout the rest of the country.²³ Historically, the Malay Muslims had cooperation and assistance, or at least safe haven, in Malaysia,²⁴ but toward the end of the 20th century, this cooperation evaporated under diplomatic pressure exerted by the Thai government.²⁵ The ostensible goal of the

²¹ See Kielsingard & Tam, *supra* note **Error! Bookmark not defined.**, at 493–99 (explaining the different categories of uncertainty and how uncertainty leads to extremism).

²² See JOSEPH CHINYONG LIOW & DON PATHAN, *CONFRONTING GHOSTS: THAILAND'S SHAPELESS SOUTHERN INSURGENCY 1–2* (Lowy Institute 2010) (describing assimilation of Malay-Muslims into the wider Thai geopolitical body).

²³ See Kobkua Suwannathat-Pian, *Historical Identity, Nation, and History-Writing: The Malay Muslims of Southern Thailand, 1940–1980s*, in *GHOST OF THE PAST IN SOUTHERN THAILAND* 234–235 (Patrick Jory ed., NUS Press 2013) (presenting the historical background of the sectarian fighting in Southern Thailand); JOHN FUNSTON, *SOUTHERN THAILAND: THE DYNAMICS OF CONFLICT* 77–78 (East-West Center 2008).

²⁴ See John Funston, *Malaysia and Thailand's Southern Conflict: Reconciling Security and Ethnicity*, 32 *CONTEMP. SOUTHEAST ASIA* 234, 235–37 (2010) (detailing the close ties the Malay Muslims in Southern Thailand had with neighbouring Malaysia).

²⁵ See Takashi Tsukamoto, *Escalation of Ethno-Cultural Tensions in Southern Thailand in the Midst of Assimilation and Homogenisation*, in *RIGHTS AND SECURITY IN INDIA, MYANMAR, AND THAILAND* 70–73 (Chosein Yamahata, Sueo Sudo and Takashi Matsugi eds., Palgrave Macmillan 2020) (describing the Thai government's harsh treatment of the Malay-Muslims).

current manifestation of the violent struggle in southern Thailand is the secession of a separate Malay Muslim state.²⁶

By October 2019, there were 350 violent exchanges during the year,²⁷ resulting in 148 killed and 219 injured,²⁸ according to the NGO Deep South Watch (a group tracking separatist attacks in the region.²⁹ The year saw the lowest casualties recorded since 2004.³⁰ 2019 was the sixteenth year of the insurgency.³¹ During this period, more than 20,000 violent incidents have taken place,³² leaving over 7,000 people dead and 13,000 injured.³³ While there has been a slight but continuing downward trend in violence since the launch of a peace dialogue in 2013,³⁴ progress in the talks has been sluggish and the conflict far from resolved.³⁵ Coordinated bomb attacks in Bangkok in August,³⁶ were swiftly followed by another series of attacks which plagued the Yala province in November 2019.³⁷ These operations serve as a reminder of the insurgents' continued capacity to launch high-profile attacks. They also

²⁶ See PETER CHALK ET AL., NATIONAL DEFENSE RESEARCH INSTITUTE, *THE EVOLVING TERRORIST THREAT TO SOUTHERN ASIA: A NET ASSESSMENT* (Rand Corporation 2009).

²⁷ V Arianti et al., *Southeast Asia: Indonesia, Philippines, Malaysia, Myanmar, Thailand, Singapore*, 12 COUNTER TERRORIST TRENDS AND ANALYSES 5, 28 (2020), https://www.jstor.org/stable/26865751?seq=1#metadata_info_tab_contents [<https://perma.cc/Y2QV-PZHT>].

²⁸ *Id.*

²⁹ Caleb Quinley, *Attacks in Thailand's Deep South: Who, Why and What's Next?*, AL JAZEERA (Jan. 21, 2019), <https://www.aljazeera.com/news/2019/01/attacks-thailand-deep-south-190120233033431.html> [<https://perma.cc/7MT2-S8MY>].

³⁰ Arianti et al., *supra* note 27.

³¹ Maywadee Viriyapah, *Could the Southern Thailand Insurgency Threaten US Businesses?*, AM. SEC'Y PROJECT (Feb. 10, 2020), <https://www.americansecurityproject.org/could-the-southern-thailand-insurgency-threaten-us-businesses> [<https://perma.cc/T98V-J836>].

³² Arianti et al., *supra* note 27.

³³ Arianti et al., *supra* note 27; Hannah Beech & Ryn Jirenuwat, *15 Killed in Southern Thailand in the Worst Violence in Years*, N.Y. TIMES (Nov. 6, 2019), <https://www.nytimes.com/2019/11/06/world/asia/thailand-violence-insurgency.html> [<https://perma.cc/K8S8-JFF8>].

³⁴ *Armed Conflict in Thailand in 2014*, in *THE WAR REPORT: ARMED CONFLICT IN 2014* 283 (Annyssa Bellal ed., 2015); Matthew Wheeler, *Thailand's Southern Insurgency*, 2014 SE. ASIAN AFFS. 319.

³⁵ Arianti et al., *supra* note 27.

³⁶ Tan Hui Yee, *Arrest warrants filed for two in Bangkok bombings*, THE STRAITS TIMES (Aug. 8, 2019), <https://www.straitstimes.com/asia/se-asia/bangkok-bombings-may-be-linked-to-politics-police> [<https://perma.cc/H8NV-CFAA>].

³⁷ Arianti et al., *supra* note 27.

validate that the root cause of the conflict has not been addressed sufficiently.³⁸

SUB-STATE NEXUS TO INTERNATIONAL JIHADISM

Thailand was largely immune to the lure of international jihadism and even after the 9/11 attacks, Thai extremists resisted efforts to collaborate with al-Qaeda.³⁹ Thai extremists chose not to attack western targets, exclaiming their cause was a righteous one aimed against the authoritarian rule of the Thai government,⁴⁰ was not aligned with the goals of al-Qaeda,⁴¹ which presupposes that they sought aid or at least sympathy from Western governments. Indeed, rebuffing al-Qaeda was in line with many extremist groups in East and Southeast Asia during the early 2000s.⁴² However, since the 2010s and with the growth of ISIS, *inter alia*, networks between sub-state terrorists and international jihadist groups have strengthened in this region, especially in the Philippines⁴³ and Indonesia.⁴⁴ Moreover, recent alarming indicators have signalled that global jihadist groups are making inroads into Thailand. One such indicator was the bombing of the Erawan Shrine in Bangkok in 2015.⁴⁵

The Erawan Shrine in Bangkok's city centre, which was built in the mid-1950s⁴⁶ is a commonly favoured site for both worshippers and tourists.⁴⁷ On the evening of August 17, 2015, a

³⁸ Arianti et al., *supra* note 27.

³⁹ Hara Shintaro, *the Risks of Transnational Jihadism in Thailand*, in Mona Kanwal Sheikh, Lars Erslev Andersen, Nicholas Chan & Hara Shintaro, *GLOBAL JIHAD IN SOUTHEAST ASIA* 81, 86 (2019).

⁴⁰ *Id.*, at 87–88.

⁴¹ *Id.*, at 88–89.

⁴² ACHARYA, *supra* note 20, at 23–60.

⁴³ Veera Singam Kalicharan, *An Evaluation of the Islamic State's Influence over the Abu Sayyaf*, 13 *PERSPECTIVES ON TERRORISM* 90, 98 (2019).

⁴⁴ Arianti et al., *supra* note 27, at 5–17; JONATHAN R. WHITE, *TERRORISM AND HOMELAND SECURITY* 277 (9th ed. 2017).

⁴⁵ Cyril Peter, *Hospitality, Tourism, Terrorism: Creating a Security-conscious Culture*, in *RISK AND SAFETY CHALLENGES FOR RELIGIOUS TOURISM AND EVENTS* 128 (Maximiliano E. Korstanje et al. eds., 2018).

⁴⁶ *Bangkok Bomb Explosion: Do you know about Erawan shrine?*, *INDIA TODAY* (Aug. 17, 2015), <https://www.indiatoday.in/fyi/story/bangkok-bomb-explosion-targetted-erawan-shrine-thailand-288756-2015-08-17> [<https://perma.cc/C69Z-XXAX>].

⁴⁷ Lindsay Murdoch, *Erawan Shrine in Bangkok*, *BANGKOK.COM*, <http://www.bangkok.com/shrines/erawan-shrine.htm#>.

bomb which carried three kilograms of TNT had been set up under a bench close to the shrine.⁴⁸ The bomb exploded at around 19:00 local time,⁴⁹ causing twenty deaths and more than 120 injuries.⁵⁰ Thai authorities subsequently elicited a confession from a Turkish national and further arrested a Chinese Uighur and a man holding a Chinese passport issued in the Xinjiang Uighur Autonomous Region.⁵¹ Thai authorities have emphasized that the attack was merely an act of retaliation by a group of human traffickers (Uighurs) which was frustrated by the recent repression on their trade,⁵² and not an act of terrorism.⁵³ However, this account has been dismissed by security analysts who contend that the attack was indeed planned by extreme Turkish nationalists⁵⁴ due to their anger over Thailand's controversial deportation of about 100 Uighurs to China.⁵⁵ The motive for Thai authorities to avoid associating the attacks with the Uighurs or terrorism is to maintain their collaboration with China,⁵⁶ and also arguably to protect their lucrative tourism business from the spectre of terrorism.⁵⁷

⁴⁸ *Bangkok bomb: What do we know?*, BBC NEWS (Aug. 20, 2015), <http://www.bbc.com/news/world-asia-33969671> [<https://perma.cc/C8X5-ER6G>].

⁴⁹ *Id.*

⁵⁰ Most of the dead were tourists visiting the shrine, including six Thais, five Malaysians, five mainland Chinese, two Hong Kong residents, one Indonesian, and one Singaporean; Poypiti Amatatham & Thomas Fuller, *Thai Police Seek "Foreign Man" in Bombing of Bangkok Shrine*, N.Y. TIMES (Aug. 19, 2015), http://www.nytimes.com/2015/08/20/world/asia/bangkok-explosion-shrine.html?_r=0 [<https://perma.cc/734W-N6HZ>].

⁵¹ Philip Sherwell, *Thailand links Bangkok shrine bomb to Chinese Uighurs for first time*, TELEGRAPH (Sep. 15, 2015), <http://www.telegraph.co.uk/news/worldnews/asia/thailand/11866250/Thailand-links-Bangkok-shrine-bomb-to-Chinese-Uighurs-for-first-time.html> [<https://perma.cc/5CGM-RP82>].

⁵² *Id.*

⁵³ Jonathan Head, *The surreal investigations into Thailand's unresolved bombings*, BBC NEWS (Aug. 17, 2016), <https://www.bbc.com/news/world-asia-37091825> [<https://perma.cc/J2B8-9J9J>].

⁵⁴ *Id.* The analysts also pointed out that the usual *modus operandi* for a criminal gang is to lay low after a crackdown rather than conduct a high-profile attack.

⁵⁵ Nopparat Chaichalearmmongkol & Te-ping Chen, *Thailand Deports 100 Muslim Uighurs to China*, WALL ST. J. (July 9, 2015), <http://www.wsj.com/articles/thailand-deports-100-muslim-uighurs-to-china-1436451320> [<https://perma.cc/G73Z-7TUN>].

⁵⁶ Amy Sawitta Lefevre & Andrew R.C. Marshall, *Bangkok shrine bombers first targeted pier for Chinese tourists*, REUTERS (Feb. 25, 2017, 7:13 AM), <https://www.reuters.com/article/us-thailand-blast-china/bangkok-shrine-bombers-first-targeted-pier-for-chinese-tourists-idUSKCN0VY2XP> [<https://perma.cc/7H8Z-HG4S>].

⁵⁷ Sherwell, *supra* note 511.

The Erawan bombing entailed more than a one-off extremist strike. It represented the first appearance in recent years in the East and Southeast Asian region where an extremist group orchestrated an attack for purposes beyond a domestic political agenda, but consisted of international constituents that aimed at multiple states and nationals.⁵⁸ Specifically, the Erawan bombing was an attack in retribution against the Thai and Chinese government⁵⁹ for their deportation of the Turkic Muslim co-religionists to China,⁶⁰ where they would face persecution or suffer torture.⁶¹ More importantly, the Erawan bombing did not originate from the native extremist group,⁶² but by members of a Uighur-based extremist organization with Chinese passports.⁶³ This event is remembered as a ‘milestone’ by other international Islamic terrorists, who are motivated to adopt similar methods in furtherance of international jihadism.⁶⁴

Prior to the Erawan bombing, the terrorism problem in Thailand appeared to be exclusively a local insurgency rather than international jihadism.⁶⁵ However, since Erawan the situation has been subtly changing. Attacks outside the southern region, including coordinated bombings in and around Bangkok in August 2019, “suggest insurgent groups have retained the capacity to

⁵⁸ Pavin Chachavalpongpun, *Bangkok bomb: The messy theories behind the Thai attack*, BBC NEWS (Aug. 20, 2015), <https://www.bbc.com/news/world-asia-33970901> [<https://perma.cc/MX5E-48AK>].

⁵⁹ The Shrine is extremely popular both with Buddhist Thais and ethnic Chinese tourists; Sherwell, *supra* note 51.

⁶⁰ NChaichalearmmongkol & Chen, *supra* note 55.

⁶¹ The fate of repatriated Uighur asylum-seekers are unknown and most likely grim as observed in the past by the Human Rights Watch, see China: Forcibly Returned Uighur Asylum Seekers At Risk, HUMAN RIGHTS WATCH (Dec. 22, 2009), <https://www.hrw.org/news/2009/12/22/china-forcibly-returned-uighur-asylum-seekers-risk> [<https://perma.cc/S7WK-6YPB>] (“China’s record of torture, disappearance, and arbitrary detention of Uighurs . . .”).

⁶² Security analysts suspect the attack was planned by the Grey Wolves, an ultra-nationalist Turkish terrorist group which sympathizes Uighurs, see Sherwell, *supra* note 51.

⁶³ *Id.*

⁶⁴ SIEGFRIED O. WOLF, THE CHINA-PAKISTAN ECONOMIC CORRIDOR OF THE BELT AND ROAD INITIATIVE: CONCEPT, CONTEXT AND ASSESSMENT 102 (2020).

⁶⁵ DUNCAN McCARGO, TEARING APART THE LAND: ISLAM AND LEGITIMACY IN SOUTHERN THAILAND (2008).

launch attacks beyond the conflict area.”⁶⁶ This signals outside assistance.

Although some scholars have downplayed the possibility of the participation of international jihadist groups in Thailand,⁶⁷ the 2015 and 2016 bombings in the region are an indication of a switch of tactics of regional extremists. On August 11 and 12, 2016, incendiary devices and bombs exploded near the nightlife streets in major tourist attractions such as Phuket and Hua Hin,⁶⁸ frequented by western tourists. No group claimed responsibility and the Thai police initially denied the relationship between the bombing and global terrorism and/or separatists operations in the south.⁶⁹ Rather, the police had concluded that those attacks resulted from provocation to a referendum which “approved a new constitution that entrenches long-term military influence in Thai politics” under robust objection from red-shirts.⁷⁰ Yet, this explanation is not aligned with the fact that the red-shirts are mostly inactive in the area and that the mode of attack is close to BRN strategies,⁷¹ to the effect that the top Thai police officials eventually reversed themselves and confirmed a possible connection between the attacks and the southern revolt.⁷²

The most telling resemblance between the 2016 bombing and the Erawan bombing is the habit of Thai authority to neglect or

⁶⁶ BenarNews Staff, *2020 Outlook: Think Tank Forecasts ‘Low-End’ Terrorism in Region*, BENARNEWS (Jan. 9, 2020), <https://www.benarnews.org/english/news/indonesian/terror-forecast-01092020171951.html> [<https://perma.cc/M6RC-27E8>].

⁶⁷ See, e.g., Shawn W. Crispin, *Islamic State in Thailand: A Phantom Threat?*, *the Diplomat* (Mar. 4, 2016), <https://thediplomat.com/2016/03/islamic-state-in-thailand-a-phantom-threat/> [<https://perma.cc/ZS49-EVEY>] (arguing that while there are clear risks in other South Asian countries from IS, the danger to Thailand is less clear).

⁶⁸ *Thailand Bomb Blasts Target Phuket and Hua Hin Tourist Spots*, BBC NEWS (Aug. 12, 2016), <http://www.bbc.com/news/world-asia-37046943> [<https://perma.cc/CW3E-NKJR>].

⁶⁹ Head, *supra* note 53.

⁷⁰ Casey Quackenbush & Helen Regan, *Thailand Bombings: Here’s What You Need to Know*, *TIME* (Aug. 12, 2016, 8:46 AM), <https://time.com/4449653/thailand-bombing-what-to-know/> [<https://perma.cc/SCV8-7BP6>].

⁷¹ Shawn W. Crispin, *The Southern Link in Thailand’s Deadly Bombings – Evidence points to a connection to the southern Thailand insurgency*, *THE DIPLOMAT* (Sep. 1, 2016), <https://thediplomat.com/2016/09/the-southern-link-in-thailands-deadly-bombings/> [<https://perma.cc/N5B3-5MRE>].

⁷² *Id.*

understate the alleged terrorist-connected events.⁷³ If the attacks were conducted by BRN then this not only signposts a new trend of attacks, but a fundamentally different ideology and methods and targets. BRN has a history of avoiding western targets and distancing itself from the al-Qaeda connected Indonesian-based Jemaah Islamiyah to preserve “international sympathy as an oppressed minority fighting for cultural and religious rights.”⁷⁴ The targeting of western tourists corresponds with the current Salafist jihadist ideology,⁷⁵ not with oppressed minorities seeking a greater measure of self-determination. Similarly, the strategic coordinated attacks represent a departure of methods and capabilities from earlier strikes.⁷⁶ Even if these attacks are not proof of collaboration, in light of the difference from its prior operational mode (e.g., avoiding western targets, the strategic collaborated strikes, etc.), it suggests guidance from global jihadism — to say at least, it is suspiciously consistent with the objectives and targets, methods and means of global jihadism. It discloses an openness to collaboration. Additionally, the timing is suspect. Coming so soon after the Erawan bombing, this new attack is likely an indicator of a connection or other simpatico between the Thai southern insurgency and global extremist groups. Irrespective of the current strength of the tie, BRN is at risk of spiralling into enlarged international extremism.

⁷³ See James Hookway, *Thailand Bombings Expose Guerrillas in the Midst*, THE WALL STREET JOURNAL (Aug. 21, 2016), <http://www.wsj.com/articles/thai-bombings-expose-hidden-southern-conflict-1471813202> [<https://perma.cc/PYP9-N9R8>] (“Junta chief and Prime Minister Prayuth Chan-ocha initially said the blasts were the work of individuals opposed to the outcome of a recent referendum endorsing a new constitution that gives the military extensive political powers. Then on Thursday, the ruling junta said it arrested 15 people in connection with the bombings, only to reverse course the following day and say none of the suspects had anything to do with the attack.”).

⁷⁴ Crispin, *supra* note 67.

⁷⁵ Eugene Mark, *What to Make of Recurring Fears of Jihadism in Southern Thailand? – Ending the local conflict should be a priority, lest the status quo change significantly*, THE DIPLOMAT (Mar. 30, 2018), <https://thediplomat.com/2018/03/what-to-make-of-recurring-fears-of-jihadism-in-southern-thailand/> [<https://perma.cc/R8RY-PXZQ>].

⁷⁶ Pavin Chachavalpongpun, *Bangkok bomb: The messy theories behind the Thai attack*, BBC NEWS (Aug. 20, 2015), <https://www.bbc.com/news/world-asia-33970901> [<https://perma.cc/H939-HV5Z>]; Thomas Fuller & Edward Wong, *Thailand Blames Uighur Militants for Bombing at Bangkok Shrine*, THE NEW YORK TIMES (Sep. 15, 2015), <https://www.nytimes.com/2015/09/16/world/asia/thailand-suspects-uighurs-in-bomb-attack-at-bangkok-shrine.html> [<https://perma.cc/7MRH-FSPQ>].

Circumventing alliances between BRN and al Qaeda or ISIS should be a central counter-terrorism policy in Thailand under both national and international agendas. Such alliances feed extremism, violence and create synergies with respect to terrorist methods, means, motivations and recruitment. It enhances the international stature of both groups and provides for greater collaborations and sharing of intelligence and weapons and cash. Diminishing terrorist violence in Thailand necessitates, *inter alia*, undoing collaborations between the local groups and international jihadists.

While local trends in targets, method and means are provocative, and though international groups have functioned within the territory of Thailand, the attacks in 2015 and 2016 are not definitive proof of a collaboration between international and local jihadist groups. On the other hand, the likelihood of such a collaboration is mounting. Regrettably, with only modest progress in reforms⁷⁷ from the Thai government and deepening resentments from southern Thai Muslims,⁷⁸ the risk becomes increasingly graver. The peril is amplified by the potential dynamic of a franchise relationship, which allows the sub-state group to prioritize its internal aims, while assisting with non-conflicting goals of the broader jihad. The BRN's goal is to establish a separate Malay Muslim state.⁷⁹ Coincidentally, the aims of ISIS contain a concomitant agenda of establishing orthodox Muslim states.⁸⁰ The two groups' goals are aligned. Thus, global jihadism does appear to be seeping into Thailand and urgent actions to de-radicalize the sub-state group are required.

In Thailand, the local sub-state groups' extremism stems from various factors such as economic deprivation, ethnic/religious bias and legal, political, and cultural dispossessions. Their quest for self-determination⁸¹ and more autonomy have been met with mixed

⁷⁷ ADAM BURKE ET AL., THE CONTESTED CORNERS OF ASIA: SUBNATIONAL CONFLICT AND INTERNATIONAL DEVELOPMENT ASSISTANCE—THE CASE OF SOUTHERN THAILAND 12–13 (2013).

⁷⁸ *See id.* at 16 (introducing southern Thailand's deep-seated resentment against the Thai state).

⁷⁹ *See* Tim Rackett, *Southern Thailand's Malay Muslim Freedom Fighters*, POLICY ANALYSIS (May 4, 2017), <https://www.mei.edu/publications/southern-thailands-malay-muslim-freedom-fighters> [<https://perma.cc/FHX7-LY84>] (introducing the goal of the main Malay Muslim group spearheading the insurgency).

⁸⁰ Kielsingard & Tam, *supra* note 10, at 517.

⁸¹ V Arianti et al., *supra* note 27, at 34.

responses historically—but often defaulting toward violent government reaction.⁸² Malay Muslims have faced discriminatory and reactive government policy in terms of the Islamic faith, trade and infrastructure, and even personal safety during the so-called Thai “war on drugs”.⁸³ Some have even regarded the southern insurgency as an act of self-defence.⁸⁴ These privations have transpired in the backdrop of a state that has been governed by a military dictatorship for many years and in an environment where competition for political power resides between red shirt populists and yellow shirt elites.⁸⁵ Both seem to largely ignore the conflict in the south while seeking to preserve the lucrative Thai tourist trade with public relations campaigns assuring low crime rates.⁸⁶ This paper reviews the legal and policy position of the Thai government as it pertains to causal factors driving sub-state terrorism.

HISTORY

The separatist narrative in southern Thailand has a complicated background. The region harbours 1.8 million total population,⁸⁷ out of which eighty percent are Islamic followers who have Malay as their native language.⁸⁸ Since the predecessor Siamese empire in 1902⁸⁹ took over the southern region, Southern

⁸² See HUMAN RIGHTS WATCH, *infra* note 214, at 13–14 (introducing the government responses towards the insurgency).

⁸³ See JONATHAN ROSS-HARRINGTON, SEPARATIST INSURGENCY IN SOUTHERN THAILAND: AN APPROACH TO PEACEMAKING 155 (Kristen Eichensehr & W Reisman eds., Martinus Nijhoff Publishers 2009) (introducing the “War on Drugs” initiated by the Thaksin administration).

⁸⁴ See HUMAN RIGHTS WATCH, *infra* note 214, at 13–14 (stating that, during the “War on Drugs,” villagers turned to insurgents for protection out of fear and resentment toward Thai authorities).

⁸⁵ See generally CLAUDIO SOPRANZETTI, OWNERS OF THE MAP: MOTORCYCLE TAXI DRIVERS, MOBILITY, AND POLITICS IN BANGKOK 255 (2018) (explaining that “the conflict between Red and Yellow Shirts and the struggle between Thaksin and other state forces over state control demonstrate that both conceptions of power imply a hierarchical structure and a pseudo-authoritarian leadership”).

⁸⁶ See *Red vs Yellow in Thailand: A republican current in Thailand challenges traditional elite rule*, 45 ECONOMIC AND POLITICAL WEEKLY 9, 8–14 May 2010.

⁸⁷ Duncan McCargo, *Informal citizens: graduated citizenship in Southern Thailand*, 34 ETHNIC RACIAL STUD. 833, 833 (2012).

⁸⁸ Patrick Jory, *From Melayu Patani to Thai Muslim: The spectre of ethnic identity in southern Thailand*, 15 SOUTH EAST ASIA RESEARCH 255, 257 (2007).

⁸⁹ International Crisis Group, *Southern Thailand: Insurgency, Not Jihad*, 98 CRISIS GROUP ASIA REPORT, 2 (2005).

Thais, who make up one fortieth of the total Thai population,⁹⁰ have endeavoured to obtain greater representation in the domestic political order dominated by Buddhist supremacy.⁹¹ The first attacks of the insurgency appeared between the 1960s and 1990s as a series of military organizations,⁹² including the Barisan Revolusi Nasional (BRN), the Patani United Liberation Organization (PULO), and the New PULO.⁹³ The insurgency peaked in 1997 when the above three forces united under the Bersatu⁹⁴ and scored strategic strikes which caused substantial destruction.⁹⁵ Not long thereafter, the Thai administration forced Malaysia into an agreement to deny protection for those three forces and to collaborate in apprehending high ranking members of those forces.⁹⁶ This proved to be successful, temporarily.⁹⁷

After a brief period, the Thai administration began to exhibit indicia of a causal attitude with “somewhat more sensitivity to the lack of economic and administrative development”⁹⁸ in the south and promised to “promote the region’s natural resources and invest greater sums in occupational training for local Malays.”⁹⁹ Measures were adopted to “enhance police, military, and political understanding of the unique Malay Muslim way of life.”¹⁰⁰ This was implemented with reconciliatory measures led by Thailand’s leader Prem Tinsulanond who attempted to bring Malay Muslim elites into the fold via a wide-ranging politico-economic benefits program.¹⁰¹ This program included development funds orchestrated by the Southern Border Provinces (SBPAC).¹⁰² It also included

⁹⁰ MCCARGO, *supra* note 65, at 183.

⁹¹ MCCARGO, *supra* note 65, at 183.

⁹² CHALK ET AL., *supra* note 26, at 7.

⁹³ CHALK ET AL., *supra* note 26, at 7.

⁹⁴ Literally, “solidarity.” See CHALK ET AL., *supra* note 26, at 8 (introducing that the above mentioned three organizations and another organization formed a tactical alliance and operated under the banner of Bersatu).

⁹⁵ CHALK ET AL., *supra* note 26, at 8.

⁹⁶ See CHALK ET AL., *supra* note 26, at 5–11 (explaining how the Malaysia government pivoted from its previous hands-off approach).

⁹⁷ See CHALK ET AL., *supra* note 26, at 5–11 (stating that the result of this policy change was decisive and “crippled the separatist movement in southern Thailand”).

⁹⁸ CHALK ET AL., *supra* note 26, at 10.

⁹⁹ CHALK ET AL., *supra* note 26, at 10.

¹⁰⁰ CHALK ET AL., *supra* note 26, at 10.

¹⁰¹ See GERALD W. FRY ET AL., *HISTORICAL DICTIONARY OF THAILAND* 372 (3d ed., 2013) (introducing Tinsulanonda’s rural development program).

¹⁰² MCCARGO, *supra* note 65, at 2.

activities such as supervision and educating “bureaucrats and security officials in cultural awareness and the local Pattani language.”¹⁰³ However, despite early promises, these enterprises were not sustained as Malay Muslim involvement in regional politics did not measurably increase.¹⁰⁴ Uniting the Malay Muslim elites also proved fruitless owing to increasing divisiveness between them and villagers,¹⁰⁵ and allegations of corruption.¹⁰⁶ In 2004, after another outbreak of violence, the elites made no efforts in mediating tensions, washing their hands of it.¹⁰⁷

Under the new leadership during the Thaksin Shinawatra era (2001 to 2006), causal models were abandoned as Thailand encountered a massive outbreak of unprecedented violence beginning in 2004,¹⁰⁸ which persists till today.¹⁰⁹ Some scholarship contends that Thaksin’s strategy in the south abandoned the Democrat’s moderating policies on religion, or sought the combination of Buddhism with chauvinistic and nationalists elements to distract the public from the leadership’s political disadvantages.¹¹⁰ These political machinations removed the established political structures such as the SBPAC, which was considered by the Thaksin administration as the Democrats’

¹⁰³ CHALK ET AL., *supra* note 26, at 10.

¹⁰⁴ “[S]ome 80 percent of the region’s civil-service administration were non-Malay (a ratio that largely exists to this day), while the majority of the local political economy remained in the hands of [Thai] officials.” CHALK ET AL., *supra* note 26, at 11 (citing interviews with Thai journalists and academics regarding Pattani province, Sept. 2006).

¹⁰⁵ See MCCARGO, *supra* note 65, at 9 (stating that “the gulf between ordinary villagers and the Malay elite expand[ed],” which opened up “new space for rekindled militant recruitment in the 1990s”).

¹⁰⁶ CHALK, *supra* note 26, at 2.

¹⁰⁷ See MCCARGO, *supra* note 65, at 184 (stating that the Malay-Muslim elites were nowhere to be seen in militant groups’ actions in 2004).

¹⁰⁸ See Srisonpob Jitpiromsri & Panyasak Sobhonvasu, *Unpacking Thailand’s southern conflict: The poverty of structural explanations*, 38 CRITICAL ASIAN STUD. 95, 96–99 (2006) (noting a large increase in violent incidents within Thailand in 2004). For a discussion surrounding speculation that the attack on April 28, 2004 marked the 57th anniversary of the Dusun-nyor “rebellion,” see CHAIWAT SATHA-ANAND, THE SILENCE OF THE BULLET MONUMENT: VIOLENCE AND “TRUTH” MANAGEMENT, DUSUN-NYOR 1948, AND KRU-ZE 2004 30–31 (Duncan McCargo ed., 2007).

¹⁰⁹ See *Thailand: Insurgents Seize Hospital in South, Attack Latest in Campaign Against Medical Facilities*, HUMAN RIGHTS WATCH (Mar. 15, 2016), <https://www.hrw.org/news/2016/03/15/thailand-insurgents-seize-hospital-south> [<https://perma.cc/JTM4-A2VE>] (discussing the seizure of a hospital in the south of Thailand in 2016).

¹¹⁰ See Duncan McCargo, *Thaksin and the resurgence of violence in the Thai South: Network monarchy strikes back?*, CRITICAL ASIAN STUDIES 39, 49–51 (2006).

implant¹¹¹ and replaced it with Thaksin's own representative¹¹² to switch to a coercive approach.¹¹³ Although SBPAC had flaws, no other institution was available to provide a communication platform between the military or police force, Islamic leaders, religious educators, and local officials.¹¹⁴ It proved pointless to form similar civil platforms in the south without involving the local Malay Muslim population.¹¹⁵

Thereafter, the Thaksin Shinawatra government was replaced by the current military dictatorship and violence has persisted in the south. The failure to reach an accord can be attributed to a number of causal factors fuelling social and group uncertainty amongst the Malay Muslim population. These factors are, in part, currently enshrined in Thai law and in strategic economic and political policies.

DOMESTIC RELIGIOUS LAW

Thailand's constitutional law (and implementing mechanisms) regarding religion is an important factor driving Muslim insecurity and uncertainty in the south.¹¹⁶ It shares certain commonality and departures with religious laws in other East and

¹¹¹ See CHALK, *supra* note 26, at 9.

¹¹² See SATHA-ANAND, *supra* note 108, at 45 (noting that for instance, Thaksin appointed his classmate Songkitti Chakkabhatra, who described southern assailants as nothing more than "common bandits," and argued that there is no real insurgency in the South, as deputy commander of the Fourth Army).

¹¹³ See INT'L CRISIS GRP., THAILAND: THE EVOLVING CONFLICT IN THE SOUTH 12 (2012), <https://www.deepsouthwatch.org/sites/default/files/241-thailand-the-evolving-conflict-in-the-south.pdf> [<https://perma.cc/G79R-RLRD>] (reporting that in 2012 "[t]here are some 41,000 professional security forces in the region, including 24,000 troops and 17,000 police. Paramilitary forces include 18,000 volunteer rangers (thahan phran) and 7,000 Or Sor (Volunteer Defence Corps). Almost 85,000 civilians organised as volunteer militias augment these forces.").

¹¹⁴ See SATHA-ANAND, *supra* note 108, at 47.

¹¹⁵ See SATHA-ANAND, *supra* note 108, at 48 (describing how Thaksin reversed course soon after abolishing the SBPAC by creating the Southern Border Provinces Peace-Building Command, and how this institution has thus far has been ineffective due in part to its lack of direct contacts with Muslim leaders).

¹¹⁶ See generally, Mark Kielsingard & Julien Tam, *Autocratic Models of Counter Terrorism in East and Southeast Asia: An International Comparative Analysis of China, Indonesia, and Thailand*, Geo. Wash. Int'l L. Rev. V 50 (2018). See also Max Constant, *Thai Muslims uneasy about rise in Buddhist nationalism*, AA, (Sept. 3, 2016), <https://www.aa.com.tr/en/asia-pacific/thai-muslims-uneasy-about-rise-in-buddhist-nationalism/640116>.

Southeast Asian states but seems ill suited for Thai reconciliatory efforts. Similar to China and Indonesia, the official Thai legal stance on religion merely acknowledges the legitimacy of certain religions, including Buddhism, Islam, Christianity, Brahmin-Hinduism, and Sikhism.¹¹⁷ Different from China, Thailand has a comprehensive system for unacknowledged religions to get the recognition from the civil authority, which, among other things, allows those religious communities to get financial subsidies from the government.¹¹⁸ Dissimilar to Indonesia, there is no specific Blasphemy ordinance in the Thailand legal tradition though certain implementing mechanisms arguably serve the same purpose.¹¹⁹ Most importantly, one of the Thai constitutional clauses offers favourable¹²⁰ and exclusive protection for Buddhism as compared to other religions.¹²¹ In 2017, the new Thai Constitution took effect and strengthened that protection. Section 67 of the Thai constitution stipulates:

The State should support and protect Buddhism and other religions. In supporting and protecting Buddhism, which is the religion observed by the majority of Thai people for a long period of time, the State should promote and support education and dissemination of dharmic principles of Theravada Buddhism for the development of mind and wisdom development, and shall have measures and mechanisms to prevent Buddhism from being undermined in any form. The State should also encourage

¹¹⁷ *Id.*, See also, U.S. DEP'T OF STATE, THAILAND 2015 INTERNATIONAL RELIGIOUS FREEDOM REPORT 3 (2015), <https://2009-2017.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dliid=256145> [<https://perma.cc/NN9Y-K7Y2>]; see, *Many Countries Favor Specific Religions, Officially or Unofficially*, PEW RESEARCH CENTER, [<https://www.pewforum.org/2017/10/03/many-countries-favor-specific-religions-officially-or-unofficially/>].

¹¹⁸ See *Id.* at 1 (“The government continued to provide financial support for officially recognized religions, including Buddhist, Muslim, Christian, Brahmin-Hindu, and Sikh organizations. Unrecognized groups did not receive subsidies, but did not report restrictions on their activities.”); see PEW RESEARCH CENTER, *Id.* See also Kielsgard and Tam, *Id.*

¹¹⁹ *Infra* note 121; see David Cohen ed., INTERPRETATIONS OF ARTICLE 156A OF THE INDONESIAN CRIMINAL CODE ON BLASPHEMY AND RELIGIOUS DEFAMATION (A LEGAL AND HUMAN RIGHTS ANALYSIS) (2018); *Id.* see also, Kielsgard and Tam,

¹²⁰ U.S. DEP'T OF STATE, *supra* note 117, at 2 (“The law specifically prohibits the defamation or insult of Buddhism and Buddhist clergy.”).

¹²¹ Mong Palatino, *Thailand's New Constitution: A Threat to Religious Freedom*, DIPLOMAT (Sept. 2, 2016), <https://thediplomat.com/2016/09/thailands-new-constitution-a-threat-to-religious-freedom/> [<https://perma.cc/NW6W-6CSJ>].

Buddhists to participate in implementing such measures or mechanisms.¹²²

This provision was formulated in line with the 2007 Thai Constitution,¹²³ with additional implementation clauses that promote: “[t]he state [to] . . . establish measures and mechanisms to prevent the desecration of Buddhism in any form and encourage the participation of all Buddhists in the application of such measures and mechanisms.”¹²⁴ The exact nature of these measures and mechanisms is still debatable. However, it takes shape similar to the Blasphemy laws in Indonesia,¹²⁵ at least in its potential effects. Scholarship and media sources have voiced concerns that a liberal interpretation of this provision could allow the government in practice to restrict Buddhists from practicing alternative forms or interpretations of Buddhism,¹²⁶ or restrict free exercise of religious communities other than Buddhism,¹²⁷ which is discriminatory in character. Certainly, proselytizing of Buddhists to join Islam or any other state-recognized religions would be strictly forbidden¹²⁸. The government reacted to criticisms in August 2016 prior to the enactment of the new Constitution. The Thai Prime Minister, Prayut Chan-o-cha, issued an executive order to “patronize and protect all religions acknowledged by the Thai state”¹²⁹ and further stated that “some groups have distorted cultural diversity to cause conflicts among people of different faiths.”¹³⁰ However, Thai scholar Surapot Thaweesak expressed disappointment with the order due to its failure to afford adequate protection for religious minorities against an overpowered constitutionally protected official religion.¹³¹ Others, such as Khemthong Tonsakulrungruang, have opined that the new religious provision in the Constitution could

¹²² CONST. OF THE KINGDOM OF THAI., Apr. 6, 2017, § 67.

¹²³ Palatino, *supra* note 121.

¹²⁴ Palatino, *supra* note 121.

¹²⁵ See Melissa Crouch, *Indonesia’s Blasphemy Law: Bleak Outlook for Minority Religions*, Asia P. Bull. (East-West Ctr.), Jan. 26, 2012 (describing how Blasphemy laws in Indonesia increased the convictions of minority religions).

¹²⁶ Raymond Scupin et al., *Buddhist-Muslim Dynamics in Siam/Thailand*, in BUDDHIST-MUSLIM RELATIONS IN A THERAVADA WORLD 128 (Iselin Frydenlund et al. eds., 2020).

¹²⁷ Palatino, *supra* note 121.

¹²⁸ CONST. OF THE KINGDOM OF THAI., *supra* note 122; Palatino, *supra* note 121.

¹²⁹ Palatino, *supra* note 121

¹³⁰ *Id.*

¹³¹ *Id.*

result in “thought crime allegations”¹³² and “curb freedom of expression and freedom of religious minorities.”¹³³

The new Constitution in Thailand can be regarded as implementing a three-rank hierarchical system with a quasi-official¹³⁴ religion on the top (Theravada Buddhism), those officially recognized religions in the second,¹³⁵ and those other unacknowledged religions at the bottom.¹³⁶ Similar to China and Indonesia, the provisions on religion in the recent Thai Constitution are not accompanied by non-establishment provisions,¹³⁷ which allows the government to promote the religion(s) of its choice, in this case, Theravada Buddhism.

With Buddhism being the dominant religion in Thailand, the Islamic community is the second largest religious group comprising

¹³² *Id.*

¹³³ *Id.* The Constitution was rejected by southern provinces where the Malay Muslim population lays. Reporting on the campaign against the draft was also banned while authorities arrested activists and journalists alike. See *Thailand: Activists, Journalist Arrested for Vote-No Campaign*, HUMAN RIGHTS WATCH (Jul. 12, 2016), <https://www.hrw.org/news/2016/07/12/thailand-activists-journalist-arrested-vote-no-campaign> [<https://perma.cc/Q5MWPT2P>] (describing how activists campaigning against the draft Constitution and that a journalist reporting on the campaign was arrested).

¹³⁴ Technically, there is no state religion in Thailand (or Indonesia) but the additional legal protection devices in both states for their favored religion (Theravada Buddhism and Sunni Islam respectively) strongly suggest a that those religions are offered a special status. See Duncan McCargo, *supra* note 87 (“‘Religion’ actually means Buddhism, the de facto state religion. Non-Buddhists can share Thai identity only insofar as they are willing to accommodate themselves to the dominance of Buddhism, to refrain from proselytizing, and to moderate their self-presentation and their religious demands.”); THE 1945 CONST. OF THE REPUBLIC OF INDON., (2002), art. [3] ; AMNESTY INT’L PROSECUTING BELIEFS: INDONESIA’S BLASPHEMY LAWS 11 (2014), https://www.amnestyusa.org/files/_index--asa-210182014.pdf [<https://perma.cc/H4U6-459F>] (describing the blasphemy law established in 1969 that is used to prosecute deviation and defamation of the officially recognized religions).

¹³⁵ For example, five religious groups (Buddhists, Muslims, Brahmin-Hindus, Sikhs and Christians) are acknowledged officially by the Thai authority. See U.S. DEP’T OF STATE, THAILAND 2018 INTERNATIONAL RELIGIOUS FREEDOM REPORT 1 (2018) (“The law officially recognizes five religious groups: Buddhists, Muslims, Brahmin-Hindus, Sikhs, and Christians.”).

¹³⁶ For example, female monks (bhikkhunis) are not recognized in Thailand. See Michael Sullivan, *the Female Monks of Thailand*, NPR (Jan. 6, 2018), <https://www.npr.org/2018/01/06/576197738/the-female-monks-of-thailand> [<https://perma.cc/L2EZ-B37T>] (describing the dilemma faced by female monks who are not recognized by law).

¹³⁷ Non-establishment provision in this context is in comparison to the US model laid out in the 1st amendment to the US constitution.

mainly of Sunni Muslims.¹³⁸ According to the Thai census and NGO estimations in 2010, Muslims occupy five to ten percent of the Thai religious demographic,¹³⁹ with other non-Buddhists occupying less than five percent¹⁴⁰ and the rest occupied by Buddhist.¹⁴¹ Thus, Malay Muslims are anticipated to suffer the greatest impact from discriminatory legislation and religiously biased enforcement. In addition, conventional separatist operations have been regionalized among Malay Muslims in most of the southern areas of Thailand for many decades,¹⁴² while other religious adherents do not harbour separatist sentiments.¹⁴³ Thus, Islam is widely seen as tied to terrorist activities,¹⁴⁴ which further exacerbates discriminatory attitudes against the Deep South region as it bleeds over to the religion itself.¹⁴⁵

Not surprisingly, there was a total rejection of the 2017 Constitution from southern Thailand.¹⁴⁶ It is likely that such discontent has further alienated the country as populaces of the south are seen as non-Buddhists and as separatists and terrorists.¹⁴⁷ In accordance with his statements, it was evidently within the contemplation of the Prime Minister, when he signed the executive order, that certain groups would take advantage of the concept of cultural diversity in order to cause conflicts between adherents of different religions.¹⁴⁸ The media expressed concerns that the

¹³⁸ U.S. DEP'T OF STATE, *supra* note 117, at 2.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*, at 1.

¹⁴³ *Id.*, at 4.

¹⁴⁴ Virginie Andre & Douglas Pratt, *Religious Citizenship and Islamophobia*, 26 ISLAM AND CHRISTIAN-MUSLIM REL. 131, 132 (2015).

¹⁴⁵ Paul Chambers, Srisompob Jitpiromsri and Napisa Waitookiat, *Introduction: conflict in the deep south of thailand: never-ending stalemate?*, 20 ASIAN INTERNATIONAL STUDIES REVIEW 1, 12 (2019).

¹⁴⁶ Palatino, *supra* note 121; *see also* Panarat Thepgumpanat & Patpicha Tanakasempipat, *Wave of Attacks Across Southern Thailand After New Constitution Signed*, REUTERS (Apr. 7, 2017), <http://www.reuters.com/article/us-thailand-south-attacks-idUSKBN17908H> [<https://perma.cc/54RK-LLFL>] (discussing the violent aftermath in southern Thailand after the new Thai king signed the new Constitution).

¹⁴⁷ *See* ARNAUD DE BORCHGRAVE ET AL., THE POWER OF OUTREACH: LEVERAGING NONGOVERNMENTAL EXPERTISE ON SUBSTATE THREATS IN SOUTHEAST ASIA 48 (2009) (stating that alienation is a prerequisite for radicalization the alienating dynamics in southern Thailand is “palpably obvious.”).

¹⁴⁸ *See* Palatino, *supra* note 121 (“The order took note that ‘some groups have distorted cultural diversity to cause conflicts among people of different faith.’”).

southern separatists would feast upon the religious discord to further their own agenda.¹⁴⁹ Thus, those who are being discriminated against were pre-emptively blamed for causing civil strife, instead of the discriminatory legislation.¹⁵⁰ Such Orwellian justifications and blame shifting (to the victims) of inherently discriminatory legislation further isolates the at-risk groups in southern Thailand and builds group extremism. This also helps build receptivity in the south to international jihadist groups because this issue of religious self-identity is a common attribute shared between local extremist groups and international jihadists.¹⁵¹ In addition to religious laws favouring Buddhism, other emergency powers of a martial law character have been in place in the southern provinces for 15 years.¹⁵²

Along with the emergency decrees in effect in the southern areas, which “since 2005 gave military, police, and civilian authorities significant power to restrict certain basic rights,”¹⁵³ Section 67 of the 2017 Constitution severely affects the Malay Muslims’ sense of identity and fuels uncertainty and discrimination.¹⁵⁴ Amid other oppressions of civil and political rights by the emergency decrees,¹⁵⁵ Section 67 undermines religious identity and sparks the fires of radicalization.¹⁵⁶ The effects of the radicalization of the Malay Muslims are reflected in a study by the U.S. State Department, which reported that in the span of only one

¹⁴⁹ *An Appeal for Harmony*, BANGKOK POST (Aug. 30, 2016), <http://www.bangkokpost.com/archive/an-appeal-for-harmony/1074028> [<https://perma.cc/QCU8-ZV6M>].

¹⁵⁰ *Id.*, Palatino, *supra* note 121.

¹⁵¹ This is particularly meaningful with respect to the ISIS as their mandate is the establishment of Islamic states. See Kielsingard & Tam, *supra* note 10, at 519. Thus, this creates two commonalities: a common religion and a common goal of self-determination of Islamic religious groups.

¹⁵² U.S. DEP’T OF STATE, THAILAND 2019 INTERNATIONAL RELIGIOUS FREEDOM REPORT 6 (2019) **Error! Hyperlink reference not valid.**

¹⁵³ U.S. DEP’T OF STATE, *supra* note 117, at 4. Rights deprivations include “pretrial detention and searches without warrant.”

¹⁵⁴ Max Constant, *Thai Muslims uneasy about rise in Buddhist nationalism*, ANADOLU AGENCY (Sep. 3, 2016), <https://www.aa.com.tr/en/asia-pacific/thai-muslims-uneasy-about-rise-in-buddhist-nationalism/640116#:~:text=Section%2067%20of%20the%20constitution,participation%20of%20all%20Buddhists%20in> [<https://perma.cc/V8TB-YJPS>].

¹⁵⁵ KATEWADEE KULABKAEW, THE POLITICS OF THAI BUDDHISM UNDER THE NCPO JUNDA 17 (2019).

¹⁵⁶ Constant, *supra* note 154.

year in 2015, “Malay Muslim insurgents continued attacks against both military and civilian targets. According to statistics from Deep South Watch, violence (including common crime) resulted in 227 individuals—predominantly civilians but including security service personnel and insurgents — being killed and 481 injured in 582 incidents as of November [2015].”¹⁵⁷

COUNTER-TERRORISM LAW

Thailand’s counter-terrorism law is written generally in accordance with international norms according to the U.N. Security Council Resolution 1373.¹⁵⁸ Thailand’s criminal offense relating to Terrorism specifies that components of the crime comprises both *actus reus* (murder, causing serious physical harm, severe damage to infrastructure, and destruction of state property), and *mens rea* (intent to threaten or compel the Thai or other governments or international organizations to do or refrain from an act, or to cause widespread fear).¹⁵⁹ The law does not include the legal protest of government policy as a terrorist act.¹⁶⁰ There are also clauses against threats to terrorism, conspiracy and incitement to perpetrate terrorism,¹⁶¹ as well as secondary party liabilities.¹⁶²

However, the law is *pro forma* and comprises nothing specific to sub-state terrorism or international Jihadism and, more notably, it does not specify any particularly tailored provisions specific to Thailand.¹⁶³ This is an omission as Thailand has suffered from both sub-state and International terrorism. Moreover, there are no provisions for fighting foreign terrorism— a developing problem in the region—either within Southeast Asia (in such places as the Philippines) or farther abroad (such as in the Middle East or North Africa region).¹⁶⁴ There is no provision for assumption of nationality jurisdiction or passive personality jurisdiction as in the Indonesian law, which makes participating in foreign terrorism an

¹⁵⁷ U.S. DEP’T OF STATE, *supra* note 117, at 6.

¹⁵⁸ S.C. Res. 1373 (Sept. 28, 2001).

¹⁵⁹ CRIMINAL CODE § 135/1 (Thai).

¹⁶⁰ *Id.*

¹⁶¹ CRIMINAL CODE § 135/2 (Thai).

¹⁶² CRIMINAL CODE § 135/3 (Thai).

¹⁶³ *See generally* CRIMINAL CODE § 135/1–4 (Thai).

¹⁶⁴ *See generally id.*

act of treason.¹⁶⁵ There are no provisions for rehabilitation or de-radicalization of perpetrators as likewise provided in the Indonesian counter-terrorism law and no suggestion of policy considerations particularly geared toward causal factors for extremism.¹⁶⁶

Accordingly, the Thai terrorism law provides a brief law enforcement vision of terrorism with all the elements of a conventional criminal law statute, instead of as a socio-political issue. Undoubtedly, it can be challenging and rather complex to integrate such further relevant indicia in a criminal ordinance, though some states have attempted it.¹⁶⁷ How the Thai terrorism law is applied is subject to transient political strategy. Since the Thaksin Shinawatra era, Thailand's policy for the Deep South has taken on different aspects that sometimes show sensitivity toward causal factors but at other times only draconian coercive measures.

OTHER CAUSAL ISSUES

Strategic Policy

The Thai state has adopted a two-pronged approach to counter-terrorism.¹⁶⁸ One, heightened security forces for the counterinsurgency and two, economic development in the south.¹⁶⁹ Thus, it adopts both a law enforcement approach and an economic causal methodology. Both have met with only marginal success.¹⁷⁰ The Thai government earlier demonstrated some indicia of addressing the causal economic issues in the beginning of the 21st century under the governance of Prem Tinsulanond,¹⁷¹ though it was

¹⁶⁵ See generally *id.* REVISION ON LAW NUMBER 15/2003 ON THE TRANSFORMATION OF THE IMPLEMENTATION OF GOVERNMENT REGULATION IN LIEU OF LAW NUMBER 1/2002 ON THE ERADICATION OF TERRORISM CRIMES INTO A LAW art. 12B (Indon.) [hereinafter REVISION ON LAW].

¹⁶⁶ See generally *supra* note 163. GOVERNMENT REGULATION IN LIEU OF LAW NUMBER 1/2002 ON THE ERADICATION OF TERRORISM CRIMES ch. 6 (Indon.) [hereinafter GOVERNMENT REGULATION].

¹⁶⁷ See, e.g., REVISION ON LAW, *supra* note 165; GOVERNMENT REGULATION, *supra* note 166.

¹⁶⁸ Kielsingard & Tam, *supra* note 10, at 504–6.

¹⁶⁹ PETER CHALK, THE MALAY-MUSLIM INSURGENCY IN SOUTHERN THAILAND UNDERSTANDING THE CONFLICT'S EVOLVING DYNAMIC 9 (2008). INT'L CRISIS GRP., *supra* note 113, at 12.

¹⁷⁰ Annual Threat Assessment: Southeast Asia, COUNTER TERRORIST TRENDS ANALYSES (RSIS, Nanyang Tech. Univ., Singapore), Jan. 2020, at 32.

¹⁷¹ McCARGO, *supra* note 65, at 2.

irretrievably flawed because of the marginal implementation and corruption of local elites.¹⁷² More recently, special economic zones for the Deep South have been launched,¹⁷³ but is still in their early stages and has failed thus far to show tangible result.¹⁷⁴ Pointedly, the Thai political strategy has backfired principally due to over-reliance on coercive measures,¹⁷⁵ failure to deliver local political representation,¹⁷⁶ and legal and cultural insensitivity.¹⁷⁷ Additionally, there is a past practice of disregarding the terrorism construct and attributing it to normal criminality.¹⁷⁸ There is also a history of vilification of Malay Muslims and Islam amid majoritarian Buddhist populations—with culturally insensitive resort to stereotypes.¹⁷⁹ Most of the situational factors for collective uncertainty (and therefore extremism) amongst the “at risk” populations in the south persist.

Economic situational factors

Southern Thailand’s large population of Malay Muslims are more economically disadvantaged and underdeveloped as compared to northern regions. In fact, 47.6% of the area is poor and unemployment is high in the three southern border provinces.¹⁸⁰

¹⁷² MCCARGO, *supra* note 65, at 184.

¹⁷³ Mongkol Bangprapa, *South to Get Special Economic Zone*, BANGKOK POST (Jan. 22, 2020, 12:08AM), <https://www.bangkokpost.com/thailand/general/1840714/south-to-get-special-economic-zone> [<https://perma.cc/2792-RNUM>].

¹⁷⁴ Chatrudee Theparat, *Economic priorities for driving growth, An executive at Bangkok Bank calls for continued infrastructure outlays*, BANGKOK POST (Oct 14, 2021, 5:20AM), <https://www.bangkokpost.com/business/2197539/economic-priorities-for-driving-growth>

¹⁷⁵ Caleb Quinley, *In Thailand’s Deep South Conflict, a ‘Glimpse of Hope’, But No Momentum to Sustain a COVID-19 Ceasefire*, NEW HUMANITARIAN (Aug. 3, 2020), <https://www.thenewhumanitarian.org/news/2020/08/03/Thailand-deep-south-conflict-coronavirus-ceasefire> [<https://perma.cc/Y5TL-GQ33>].

¹⁷⁶ MCCARGO, *supra* note 65, at 70–75.

¹⁷⁷ INT’L CRISIS GRP., SOUTHERN THAILAND: INSURGENCY, NOT JIHAD 30 (2005), https://www.files.ethz.ch/isn/10752/098_southern_thailand.pdf [<https://perma.cc/8DQV-W84Y>].

¹⁷⁸ U.S. DEP’T OF STATE, *supra* note 152, at 3–5.

¹⁷⁹ Desmond Ball & Nicholas Farrelly, *Interpreting 10 Years of Violence in Thailand’s Deep South*, 8 SEC. CHALLENGES 1, [4] (2012).

¹⁸⁰ NAT’L RECONCILIATION COMM’N, OVERCOMING VIOLENCE THROUGH THE POWER OF RECONCILIATION 24–26 (2006), <https://chaisuk.files.wordpress.com/2008/09/nrcreport-eng1.pdf> [<https://perma.cc/32Q4-SE4D>]. The National Reconciliation Commission is an independent body established by the Thaksin government specifically to address the source of violence in the south. Duncan McCargo, *The Trouble with Reconciliation*, NIKKEI ASIAN

Nonetheless, some scholars have maintained that economic problems are not the core cause of the southern Malay Muslims' insurgency.¹⁸¹ Some argue that "Malay Muslims [in Thailand] were better off than ever before" thanks to the high rubber prices.¹⁸² While there are transitory prosperity peaks and valleys, their history is one of comparative poverty.¹⁸³ This adheres to the caveat, in laying out a holistic causal approach, that economic reform is only one resource to diminish radicalization. Acting alone, it is rarely adequate to drive wide-ranging social changes and eliminate perilous aggregates of group uncertainty amongst at-risk groups.¹⁸⁴ As a part of an all-inclusive strategy, it can add to a group's sense of well-being but only as one element amongst several—social justice disputes must also be addressed.

According to Mustapa, one opportunity for amplified economic expansion would be enhanced trade and cooperation between southern Thailand and northern Malaysia.¹⁸⁵ However, he notes that the cross-border infrastructure between Malaysia and Thailand would need major upgrades to facilitate trade and investment flows.¹⁸⁶ "One of the issues is the income level. The northern part of Peninsular Malaysia, especially Kelantan, and Southern Thailand, is poor."¹⁸⁷ When addressing the Association of Southeast Asian Nations, he further advised that, "[t]o bridge the income gaps within Malaysia and Thailand, the two governments

REV. (May 22, 2015, 7:00AM), <https://asia.nikkei.com/Politics-Economy/Policy-Politics/The-troublewith-reconciliation> [<https://perma.cc/UE2X-2WDE>].

¹⁸¹ MCCARGO, *supra* note 65, at 11–12.

¹⁸² MCCARGO, *supra* note 65, at 6. *See generally* Srisompob Jitpiromsri & Panyasak Sobhonvasu, *Unpacking Thailand's Southern Conflict: The Poverty of Structural Explanations*, in *RETHINKING THAILAND'S SOUTHERN VIOLENCE* 89–111 (Duncan McCargo ed., 2007).

¹⁸³ Srisompob Jitpiromsri & Panyasak Sobhonvasu,

¹⁸⁴ The insecurity driver towards extremism has five aspects: economic, cultural/social, personal safety and political. *See* Kielsingard & Tam, *supra* note 3, at 466.

¹⁸⁵ Mustapa, *Improve Land Crossings with Thailand to Enhance Cross-Border Trade*, FOCUS MALAYSIA (Feb. 18, 2020), <https://focusmalaysia.my/mainstream/mustapa-improve-land-crossings-with-thailand-to-enhance-cross-border-trade> [<https://perma.cc/9W4P-TFCE>].

¹⁸⁶ *Enhance Cross-Border Infrastructure to Facilitate Investment, Trade: Mustapa*, SUN DAILY (Feb. 18, 2020), <https://www.thesundaily.my/business/enhance-cross-border-infrastructure-to-facilitate-investment-trade-ustapa-XA2020154> [<https://perma.cc/5YX6-WLGL>].

¹⁸⁷ *Id.*

need to demonstrate their commitment to enhance the socio-economic status of people at the border.”¹⁸⁸

Mustapa counselled that this could be accomplished through existing bodies such as Malaysia’s East Coast Economic Region Development Council and Northern Corridor Implementation Authority, which has been tasked to boost the socio-economic growth in the East Coast and Northern region.¹⁸⁹ “Meanwhile, Thailand has the Southern Border Provinces Administrative Centre responsible for the socio-economic development of its southern region.”¹⁹⁰ Enhanced collaboration between these bodies would prove beneficial.

The Thai government has approved the development of a special economic zone (SEZ) in southern Thailand’s Songkhla Chana district and provided a budget of approximately 19 billion baht.¹⁹¹

Despite these efforts the counterinsurgency in southern Thailand continues to disappoint.¹⁹² Economic reforms have not yet yielded fruit. A recent economic survey found that approximately 15 % of the population of the Southern Border Region is unemployed.¹⁹³ Over 1/3 of the population is improperly educated because of language barriers, as most public schools in the Deep South deliver lessons in standard Thai due to the assimilation policy.¹⁹⁴ The Thai government’s repetitive failures to realize the fundamental needs of the Malay Muslims in both education and economic development have exacerbated the locals’ grievances and dissatisfactions.¹⁹⁵ In turn, these grievances energize separatists’

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Southern Thailand to Have Special Economic Zone*, NEW STRAITS TIMES, Jan. 24, 2020, <https://www.nst.com.my/world/region/2020/01/559321/southern-thailand-have-special-economic-zone> [<https://perma.cc/W2KH-W9ZN>].

¹⁹² See Chayathip Weerakajorn, *Counterinsurgency in the Deep South of Thailand: A Continuing Failure?* SMALL WARS JOURNAL (Nov. 17, 2019), https://smallwarsjournal.com/jrnl/art/counterinsurgency-deep-south-thailand-continuing-failure#_edn22 [<https://perma.cc/SSX8-RU3S>].

¹⁹³ Anders Engvall & Magnus Andersson, *The Dynamics of Conflict in Southern Thailand*, 14 ASIAN ECON. PAPERS 171, 177 (2014), doi:10.1162/asep_a_00303.

¹⁹⁴ *Id.*

¹⁹⁵ See Surasit Vajirakachorn, *Social Inclusion in Southern Border Provinces of Thailand*, 2 INT’L J. SOC. QUALITY 63, 64-5 (2012); See also SIRIPHONG PATCHARAKANOKKUL, *RETHINKING STRATEGY POLICY OF COUNTER INSURGENCY IN SOUTHERN THAILAND* 1 (USAWC Strategy Research Project, U.S. Army War College, Carlisle

rage toward the government. Thus, the separatists pursue an independent Islamic state where they believe their needs and ethno-religious identity will be secured from threats, injustice and assimilation policies.¹⁹⁶

Political situational factors

To a narrow extent, the topic of religion influences the dispute in the insurgency and functions as a self-fulfilling prophesy. Some analysts argue that unattended nationalist ideology in the south is the root of the insurgency's Islamization.¹⁹⁷ It has been observed that "Islam is a resource that the militant movement mobilizes for political ends"¹⁹⁸ but "violence is not primarily animated by religious grievances," as the regional government has focused mainly on stripping political autonomy from the Malay Muslims rather than undermining their religious identity.¹⁹⁹ However, it is accurate to say that religious faith is one proto-typical attribute, amongst others, of the Malay Muslim's group identity and that attacks on Islam project uncertainty within the group. Significantly, notwithstanding the absence of enmity among much of the Thai population toward Islam, an Islamic ideology has been able to project into the insurgency and add to rallying support both for and against the movement.²⁰⁰ Undoubtedly, Thai Muslims feel their group identity under attack with biased religious laws, and discriminatory initiatives only redouble extremist attitudes. But also eroding group identity is the inadequate political representation, social justice and poor economic prospects.²⁰¹ Meanwhile, some amongst the majoritarian Buddhist population tend to blame southern Muslims for the conflict in the southern insurgency and the

Barracks, Pennsylvania, 2010), <https://gisf.ngo/wp-content/uploads/2014/09/0100-Patcharakanokkul-et-al-2010-Rethinking-Strategy-Policy-of-Counterinsurgency-in-Southern-Thailand.pdf> [<https://perma.cc/9YPK-25GN>].

¹⁹⁶ See ROHAN GUNARATNA & ARABINDA ACHARYA, *THE TERRORIST THREAT FROM THAILAND: JIHAD OR QUEST FOR JUSTICE?* 17 (Potomac Books 2012).

¹⁹⁷ MCCARGO, *supra* note 65, at 180–81.

¹⁹⁸ *Id.* at 180.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Kielsingard & Tam, *supra* note **Error! Bookmark not defined.**, at 501.

violence and economic turbulence it engenders throughout Thailand.²⁰² This tends to bleed over into Islamophobia.²⁰³

The urban and rural regions in Thailand are further fragmented by political disagreements, particularly in the north, between the red-shirts and the yellow-shirts.²⁰⁴ The red-shirts consist predominantly of migrant employees from the rural areas outside Bangkok who backed the removal of the former Prime Minister Thaksin Shinawatra.²⁰⁵ On the other side, the yellow-shirts supported Thaksin and were comprised of royalists, hardcore nationalists, and the urban elites.²⁰⁶ In Thailand there are three distinct political groups; the Malay Muslims demanding broader political autonomy or self-determination, the populists red shirts, and the elite yellow shirts. However, the majority of Thai belong to either the red shirts or yellow shirts,²⁰⁷ and Malay Muslim's political considerations take a backseat.

Notwithstanding Thailand's law against terrorism, early on Thaksin initiated a "war against drugs" arguably to obfuscate the social problems in the south,²⁰⁸ and label it a mere law enforcement issue. However, calling it "war" was somewhat accurate. It was a conflict whereby thousands lost their lives after the 2003 campaign.²⁰⁹ Violence by law enforcement officials was not only tolerated, but also seemingly encouraged by the government through

²⁰² See SASCHA HELBARDT, DECIPHERING SOUTHERN THAILAND'S VIOLENCE: ORGANIZATION AND INSURGENT PRACTICES OF BRN-COORDINATE 35-8 (Yusuf Ishak Institute 2015); See generally MICHAEL K JERRYSON, BUDDHIST FURY: RELIGION AND VIOLENCE IN SOUTHERN THAILAND (Oxford University Press 2011).

²⁰³ Rodion Ebbighausen, *Buddhists fan flames of Islamophobia in Southeast Asia*, DEUTSCHE WELLE (Mar. 27, 2018), <https://www.dw.com/en/buddhists-fan-flames-of-islamophobia-in-southeast-asia/a-43158407> [<https://perma.cc/Y2P8-H8MS>].

²⁰⁴ *Profile: Thailand's Reds and Yellows*, BBC NEWS (July 13, 2012), <http://www.bbc.com/news/world-asia-pacific-13294268> [<https://perma.cc/73PJ-C97F>].

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Kielsingard & Tam, *supra* note **Error! Bookmark not defined.**, at 503.

²⁰⁸ See *Thai PM Hails Drug War Success*, BBC NEWS <http://news.bbc.co.uk/2/hi/asia-pacific/3256836.stm> [<https://perma.cc/EWY6-SQFK>] (last updated Dec. 3, 2003).

²⁰⁹ The official death toll was 2274, see *2,274 Dead in Thai Drugs Crackdown*, CNN (May 7, 2003), <http://edition.cnn.com/2003/WORLD/asiapcf/southeast/05/07/thailand.drugs/> [<https://perma.cc/69SS-8YEW>], though Human Rights Watch reported 3000 dead during that period, see HUM. RTS. WATCH, NOT ENOUGH GRAVES: THE WAR ON DRUGS, HIV/AIDS, AND VIOLATIONS OF HUMAN RIGHTS 12 (2004), <https://www.hrw.org/reports/2004/thailand0704/thailand0704.pdf> [<https://perma.cc/H8RY-VX44>].

monetary reward or bounties.²¹⁰ The Prime Minister said “at three Baht [U.S.\$0.07] per methamphetamine tablet seized, a government official can become a millionaire by upholding the law, instead of begging for kickbacks from the scum of society.”²¹¹ Chalerm Yubamrung, the Interior Minister, openly held human rights in contempt in his endorsement of the war when speaking to parliament.²¹²

The war had incited countless extrajudicial executions by the police as well as many violations of due process²¹³ and other abusive police misconduct. Followed by an investigation led by the military installed government of General Surayud Chulanont in 2007, it was discovered that of the 2,819 “war related” deaths, 1,449 did not involve drugs and 571 lacked any explanation.²¹⁴ The result of the investigation was never made public.²¹⁵ According to militants, many Malay Muslims chose to join them due to their fear and hatred towards the government during the disproportional “war on drugs.”²¹⁶ Indeed, this is an example of whole populations living outside the protection of law and due process—creating uncertainty stemming not only from political and economic misbalance but also

²¹⁰ HUM. RTS. WATCH, *supra* note 209 at 7.

²¹¹ *Id.* at 7 (citing Meryam Dabhoiwala, *A Chronology of Thailand’s “War on Drugs”*, ASIAN LEGAL RES. CTR. (May 9, 2003), <http://www.humanrights.asia/resources/journals-magazines/article2/special-report-extrajudicial-killings-of-alleged-drug-dealers-in-thailand/a-chronology-of-thailands-war-on-drugs> [<https://perma.cc/E9TE-6LVZ>]).

²¹² See Tom Fawthrop, *Not Another War on Drugs*, THE GUARDIAN (Apr. 18, 2008), <http://www.theguardian.com/commentisfree/2008/apr/18/notanotherwarondrugs> [<https://perma.cc/WG48-ZKDL>] (“[F]or drug dealers, if they do not want to die, they had better quit staying on that road. Drugs suppression in my time as interior minister will follow the approach of Thaksin. If that will lead to 3,000-4,000 deaths of those who break the law, then so be it. That has to be done.”).

²¹³ HUM. RTS. WATCH, *supra* note 209, at 6–27.

²¹⁴ *Thailand to Restart War on Drugs*, ASIA SENTINEL (Mar. 5, 2008), <https://www.asiasentinel.com/p/thailand-to-restart-war-on-drugs> [<https://perma.cc/386T-XM7M>] (“More than 2,800 people were killed . . . The committee found that about 1,370 of those deaths were related to drugs, while 878 were not. Another 571 people were killed for no apparent reason, according to the panel, and police investigated just 80 of those cases.”).

²¹⁵ *Thailand: Prosecute Anti-Drugs Police Identified in Abuses*, HUM. RTS. WATCH (Feb. 7, 2008, 7:00 PM), <https://www.hrw.org/news/2008/02/07/thailand-prosecute-anti-drugspolice-identified-abuses> [<https://perma.cc/8B4P-N47M>]

²¹⁶ HUM. RTS. WATCH, *IT WAS LIKE SUDDENLY MY SON NO LONGER EXISTED: ENFORCED DISAPPEARANCES IN THAILAND’S SOUTHERN BORDER PROVINCES 13–14* (2007), **Error!** **Hyperlink** **reference** **not valid.**<https://www.hrw.org/reports/2007/thailand0307/thailand0307web.pdf> [<https://perma.cc/G99F-GDE6>].

personal security uncertainty as an objectively based fear of government atrocities. Unsurprisingly, unfair treatment was a significant factor in motivating extremism as well as the need for collective self-defence.²¹⁷ A member of BRN-Coordinate told Human Rights Watch:

“Out of resentment towards Thai authorities, those villagers were desperate and requested us to give them protection. We gave them training in military and self- defense tactics, in parallel with political indoctrination about the struggle for independence. This is how we re-established control of the population and stepped up attacks on the government. We truly believe in our cause—that we are fighting to liberate our land and protecting our people from the oppressive Thai authorities.”²¹⁸

The failure of the succeeding government to publicly expose the results of the study on massive police misconduct, or to make reparations to the victims, or to punish the perpetrators of what amounted to crimes against humanity further isolated the Malay Muslim populations who accurately regarded it as a cover-up.

Moreover, Thai authorities have often been averse to call out the real issues in the south. They treat the insurgency as “simple banditry a conflict over benefits such as the spoils of smuggling or the drugs trade . . . [or even] . . . malevolent machinations of local and national politicians.”²¹⁹ These efforts mask the real issues and failures and disguise the need for reform.

Likewise, a state of emergency was decreed and extended in southern Thailand, with martial law imposed.²²⁰ Due process continues to elude Muslims accused of aiding the insurgency,

²¹⁷ Geoff Dean, *Framing the Challenges of Online Violent Extremism: “Policing–Public–Policies–Politics” Framework*, in *COMBATING VIOLENT EXTREMISM AND RADICALIZATION IN THE DIGITAL ERA 240* (Majeed Khader et al. eds., 2016) (“Individuals’ journey along the road to a violently extreme mind-set starts with a perception of injustice or unfair treatment, real or imagined, against themselves, their race or their country.”).

²¹⁸ HUM. RTS. WATCH, *supra* note 216.

²¹⁹ MCCARGO, *supra* note 87, at 88.

²²⁰ Announcement of State of Emergency by the Prime Minister of Thailand (2019), http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/227/T_0032.PDF [<https://perma.cc/2GYB-M49E>].

human rights groups say.²²¹ In one dispositive case Sumayyah Minka, 30, disclosed how she could not forget the face of her husband, Abdullah Isomuso, 32, on the night of July 20, 2019.²²² That night, Isomuso, a rubber farmer, was seized by the Thai army and later discovered unconscious in a military camp in Pattani, southern Thailand.²²³ He was arrested for allegedly being involved in the rebellion in the Muslim-majority region.²²⁴

Impunity reigns for government security forces and strategy actors despite considerable misconduct perpetrated against the Malay Muslims.²²⁵ The government has failed to prosecute members of its security forces responsible for torture and unlawful killings.²²⁶ In some cases, cover-up was evident as authorities provided financial compensation to victims or their families in exchange for their promise not to speak out or file criminal cases against officials.²²⁷

Victims are often arrested instead of perpetrators,²²⁸ and Muslim defendants in criminal cases are singled out for mistreatment.²²⁹ A Buddhist judge in Yala shot himself in a courtroom to protest what he said was pressure from above to sentence Muslim defendants to the death penalty, despite a lack of evidence in the cases.²³⁰ The judge survived the bullet wound to his torso.²³¹

With cultural/social and political insecurity in the south, the government has not adopted effective strategies. From political

²²¹ Hannah Beech & Ryn Jirenuwat, *15 Killed in Southern Thailand in the Worst Violence in Years*, N.Y. TIMES, Nov. 6, 2019, <https://www.nytimes.com/2019/11/06/world/asia/thailand-violence-insurgency.html> [<https://perma.cc/3TG6-BBJ6>].

²²² Pizaro Gozali Idrus, *Southern Thailand: Heartbreak of Martial Law*, ANADOLU AGENCY, Oct. 2, 2019, <https://www.aa.com.tr/en/asia-pacific/southern-thailand-heartbreak-of-martial-law/1599896> [<https://perma.cc/ZN8M-RK3M>].

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Ian Storey, *Southern Discomfort: Separatist Conflict in the Kingdom of Thailand*, 35 ASIAN AFFS.: AN AM. REV. 31, 45 (2008).

²²⁶ *Id.*

²²⁷ *Thailand: Events of 2019*, HUM. RTS. WATCH (2020), <https://www.hrw.org/world-report/2020/country-chapters/thailand> [<https://perma.cc/J6SS-9TQY>].

²²⁸ BRUCE VAUGHN ET AL, CONG. RSCH. SERV., RL34194, TERRORISM IN SOUTHEAST ASIA (2009), <https://fas.org/sgp/crs/terror/RL34194.pdf> [4MY Y- ZP52].

²²⁹ *Id.*

²³⁰ Beech, *supra* note 221.

²³¹ *Id.*

pressure on the judiciary to disproportionately high frequency of death sentences to Muslims,²³² to continued application of martial law,²³³ which enables the military to apply torture to civilians,²³⁴ to lack of political representation and economic autonomy,²³⁵ little improvement is shown compared to pre-2019 practices and strategies. Unfair treatment for Muslims in Thailand continues to plague this at risk community.

On the other hand, officials from Thailand have held their first formal meeting in recent years with Muslim separatists belonging to the BRN.²³⁶ The results of this negotiation have yet to be seen but it may provide a forum for grievance narratives and segue to possible positive initiatives. Thai authorities have the prospect to use this platform, *inter alia*, to commence the essential legal and strategic reforms that would thwart the structural discrimination against the Muslim south. This would de-accelerate extremism that has erupted into violence for nearly two decades. Ominously, it is noted that Thailand's budget for peaceful conflict resolution is "much lower than those allocated for counterinsurgency operations such as the improvement of intelligence gathering,"²³⁷ raising questions about the government's commitment to a peaceful settlement, Rungrawee said.²³⁸ This is further complicated because, as Rungrawee observes, it is also unclear whether BRN can speak with one voice and control the various insurgent factions on the ground.²³⁹

CONCLUSION

In any causal model it is difficult to keep track of all the moving parts because it is a counter-terrorism approach that calls for pervasive and complex solutions. In Thailand this is true. Avoiding alliances between BRN and al Qaeda or ISIS should be a

²³² Kielsgard & Tam, *supra* note **Error! Bookmark not defined.**, at 499–508.

²³³ Idrus, *supra* note 222.

²³⁴ Idrus, *supra* note 222.

²³⁵ MCCARGO, *supra* note 65, at 70–5.

²³⁶ Eileen Ng, *Thailand: Officials Hold Meeting with Southern Insurgent Group*, THE DIPLOMAT (Jan. 22, 2020), <https://thediplomat.com/2020/01/thailand-officials-hold-meeting-with-southern-insurgent-group> [<https://perma.cc/JHK2-YB9B>].

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

fundamental counter-terrorism policy under both national and international agendas. Such alliances feed extremism,²⁴⁰ violence and create synergies with respect to terrorist methods, means, motivations and recruitment.²⁴¹ It enhances the international stature of both international jihadist group and the sub-state group²⁴² and provides for greater collaborations and sharing of intelligence and weapons and cash²⁴³ leading to a downward spiral of violence. Dismantling terrorism in Thailand hinges on, *inter alia*, dismantling franchise collaborations between the local groups and international jihadists, which hinges on resolving domestic governance issues and disputes.

Thailand is an outstanding case for a bottom up strategy as sub-state groups have not yet solidified their alliances with international jihadism—though there is significant potential for franchise arrangements. It has shown resistance to forming those collaborations in the past.²⁴⁴ The insurgency has well-defined domestic goals and human rights expectations that disconnect with many of the ambitions of international terrorist groups and it seeks to refrain from being labelled under the same brush.²⁴⁵ It has previously sought solidarity with Western states²⁴⁶ and has responded positively, at least initially, to the Thai government's previous causal efforts.²⁴⁷ It also is a situation where there are practical solutions that preclude it as an existential threat.²⁴⁸

²⁴⁰ *Jihadism in Southern Thailand: A Phantom Menace*, INT'L CRISIS GRP. (Nov. 8, 2017), <https://www.crisisgroup.org/asia/south-east-asia/thailand/291-jihadism-southern-thailand-phantom-menace> [<https://perma.cc/NYU6-PQ9J>].

²⁴¹ See Eugene Mark, *supra* note 75.

²⁴² See INT'L CRISIS GRP., *supra* note 240.

²⁴³ Kitti Jayangkula, *A Critique on Thailand's Law on Terrorism as a Tool to Combat International Terrorist Activities*, 4 EAU HERITAGE J. 1, 6 (2014).

²⁴⁴ See *supra* note 39.

²⁴⁵ *Southern Thailand: Insurgency, Not Jihad*, INT'L CRISIS GRP. (May 18, 2005), <https://www.crisisgroup.org/asia/south-east-asia/thailand/southern-thailand-insurgency-not-jihad> [<https://perma.cc/PU37-V36D>].

²⁴⁶ U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2017, 66–7 (2018), https://www.state.gov/wp-content/uploads/2019/04/crt_2017.pdf [<https://perma.cc/H2UB-BK92>].

²⁴⁷ GERALD W. FRY et al., HISTORICAL DICTIONARY OF THAILAND 372 (3rd ed., Scarecrow Press 2013).

²⁴⁸ Mark Kielsingard & Hey Juan Julian Tam, *The Second Front - Again? The Rising Tide of Global Jihadism in East and Southeast Asia*, 13 INTERCULTURAL HUM. RTS. L. REV. 131, 132 (2018).

Thus, the question becomes how to dismantle budding alliances between sub-state and international terrorists groups and to generally scale back extremism of sub-state groups in Thailand. Predictably, the solutions are easier to identify than to implement. Yet solutions are potentially feasible, in time, as this situation is conducive to negotiation²⁴⁹ and reform.²⁵⁰ One preliminary starting point is the necessity of Thai authorities to recognize the problem in the south as terrorist activity, whether motivated by freedom fighting or not, as opposed to mere conventional criminality.²⁵¹ Despite any negative impact it may have on tourism, the violence will continue to impact national economic policy until the issues are genuinely addressed. The depth of the problem must not be downplayed for mercantile interests. This can also presage other social/legal/economic solutions instead of sole dependence upon mere law enforcement responses. In as much as tourists have seldom been directly targeted *per se*, especially westerners, it is a positive signal that the BRN continues to retain a high degree of autonomy from international jihadist groups.

One deleterious factor is the democracy deficit in the current Thai governance,²⁵² and the conflicts between the red shirts and the yellow shirts notwithstanding.²⁵³ The sub-state insurgency has for many years called for an independent Malay Muslim state.²⁵⁴ That

²⁴⁹ Austin Bodetti, *Thailand's Quiet Crisis: 'The Southern Problem'*, THE DIPLOMAT (July 12, 2019), <https://thediplomat.com/2019/07/thailands-quiet-crisis-the-southern-problem/> [<https://perma.cc/AV4T-XH6F>].

²⁵⁰ See generally Adam Burke, Pauline Tweedie & Ora-orn Poocharoen, *The Contested Corners of Asia: Subnational Conflict and International Development Assistance, the Case of Southern Thailand*, ASIA FOUND. (2013), <https://asiafoundation.org/resources/pdfs/SouthernThailandCaseStudyFullReport.pdf> [<https://perma.cc/K5TH-SEW9>].

²⁵¹ Shawn W. Crispin, *Thailand Now Says Terrorist Have Cells in Muslim Provinces*, WALL ST. J. (June 10, 2013), <https://www.wsj.com/articles/SB105518396496748100> [<https://perma.cc/DGF3-RZCA>].

²⁵² Hannah Steinkopf-Frank & Manon Dambrine, *Thailand To Belarus: The Divides Of Democracy Protesters*, WORLD CRUNCH (Aug. 21, 2020), <https://worldcrunch.com/world-affairs/thailand-to-belarus-the-divides-of-democracy-protesters#> [<https://perma.cc/4AWL-P78G>].

²⁵³ *6 Things to Know About Thailand's Anti-Government Protests*, STRAITS TIMES (Aug. 17, 2020), <https://www.straitstimes.com/asia/se-asia/6-things-to-know-about-thailands-anti-government-protests> [<https://perma.cc/SVF2-N4FH>].

²⁵⁴ Peter Chalk, *the Malay-Muslim Insurgency in Southern Thailand*, 10-11 (RAND National Defence Research Institute, Occasional Paper Series, Paper 5, 2008), https://www.rand.org/content/dam/rand/pubs/occasional_papers/2008/RAND_OP198.pdf [<https://perma.cc/CFB9-U5H8>].

is, external self-determination or succession as an independent state.²⁵⁵ This is highly unlikely given power disparities in Thailand. However, greater autonomy and a form of internal self-determination for local issues would be a feasible compromise. Concession of this character is made more difficult in light of the larger red shirt/yellow shirt conflict in the north and the military imposed government currently in place.²⁵⁶ Admittedly, it is ambitious to deliver greater political representation and local autonomy in a country that is presently suffering from such a democracy deficit, and must be regarded as a longer-term goal.

Another issue is the predominant legal favouring of the religion of Buddhism in the Thai constitution²⁵⁷ and implementing provisions.²⁵⁸ This is a situational factor that directly assaults the Malay Muslim's self-identity and builds perceptions of grossly unfair treatment. Such actions engenders profound uncertainty among Muslim population clusters, especially when combined with the imposition of martial law,²⁵⁹ unfair treatment in the courts²⁶⁰ amounting to discriminatory practices²⁶¹ and suspension of due process,²⁶² lack of political representation²⁶³ and economic viability,²⁶⁴ and the continuing impunity for security forces who had committed crimes against humanity²⁶⁵ during the Thaksin

²⁵⁵ *Id.*

²⁵⁶ Panu Wongcha-um and Juarawee Kittisilpa, *Thai Pro-Government Rally Raise Risk of New Confrontations*, REUTERS (July 30, 2020), <https://uk.reuters.com/article/uk-thailand-protests/thai-pro-government-rally-raises-risk-of-new-confrontations-idUKKCN24V248> [<https://perma.cc/MJ2A-WQGW>]; Helen Regan and Kocho Olarn, *Thailand Protest Movement Puts Country's Youth on Collision Course with Military-Backed Establishment*, CNN (July 24, 2020), <https://edition.cnn.com/2020/07/23/asia/thailand-anti-government-protests-intl-hnk/index.html> [<https://perma.cc/6N5T-ZPX2>].

²⁵⁷ Khemthong Tongsakulrungruang, *The Dangerous Buddhist Card in Thailand's New Constitution*, THE DIPLOMAT (Jan. 30, 2018), <https://thediplomat.com/2018/01/the-dangerous-buddhist-card-in-thailands-new-constitution> [<https://perma.cc/FC6V-U4A5>].

²⁵⁸ CONST. OF THE KINGDOM OF THAILAND, *supra* note 122, at sec. 79.

²⁵⁹ Announcement of State of Emergency, *supra* note 220; Pizaro Gozali Idrus, *supra* note 222.

²⁶⁰ Hannah Beech & Ryn Jirenuwat, *supra* note 221.

²⁶¹ U.S. DEP'T OF STATE, *supra* note **Error! Bookmark not defined.**, at 4.

²⁶² NOT ENOUGH GRAVES: THE WAR ON DRUGS, HIV/AIDS, AND VIOLATIONS OF HUMAN RIGHTS, *supra* note 209, at 6–27.

²⁶³ MCCARGO, *supra* note **Error! Bookmark not defined.**, at 70–5.

²⁶⁴ Srisonpob Jitpiromsri & Panyasak Sobhonvasu, *supra* note 108.

²⁶⁵ *See also* HUM. RTS. WATCH, *supra* note 216, at 13–14.

Shinawatra “war on drugs.”²⁶⁶ Until these trends are reversed and an accounting made, extremism will not likely abate.

A glimpse of a bona fide causal approach would include legal reforms to address political, economic, cultural and personal safety uncertainty. First, the implementing provisions for the constitutional protection of Buddhism should be crafted and applied in a faith neutral manner that would assure non-Buddhist populations of fair treatment. Either repeal section 67 of the Thai constitution or amend it to be faith neutral or establish implementing strategies that would result in a faith neutral effect. The latter option would be the most practical one because it would not require a constitutional amendment. It might also be wise to re-drafting the Thai counter-terrorism laws to observe greater distinctions between international jihadist and sub-state terrorism as well as providing sentencing enhancements for fighting as foreign terrorist fighters.²⁶⁷ It could also stimulate rehabilitation efforts,²⁶⁸ at least with the less radicalized prisoners.

Martial law in the Southern Border Region²⁶⁹ should be lifted. There should be an increase in checks/oversight on law enforcement that would be consistent with policies in the rest of the country to stamp-out police misconduct. Additionally, judicial monitoring mechanisms should be put in place to safeguard greater due process protections. In addition to judicial mechanisms, empirical studies should test results (especially in sentencing practices) in criminal cases involving Malay Muslims. Moreover, this should also include the appointment of Malay Muslim judges to the bench. Greater efforts should be taken to oversee judicial criminal proceedings, including the sufficiency of the evidence, the due process rights of the accused, non-discrimination, and sentencing practices in the courts.

Local elections should aim for greater representation by the Malay Muslims. The local populations should have greater autonomy or internal self-determination to run local issues such as the schools (in a language the locals understand), local courts, local

²⁶⁶ JONATHAN ROSS-HARRINGTON, *supra* note 83, at 155.

²⁶⁷ See REVISION ON LAW NUMBER 15/2003, *supra* note 165, at art.12A.

²⁶⁸ Essentially, such de-radicalization efforts would be similar to those initiatives currently in place in Indonesia. See Kielsingard & Tam, *supra* note **Error! Bookmark not defined.**, at 502–11.

²⁶⁹ See Announcement of State of Emergency, *supra* note 220.

police and publicly funded public works and infrastructure. The relevant provinces in the Southern Border Region should be developed as autonomous zones or semi-autonomous zones, particularly because they share a common cultural heritage uniquely distinct from the rest of Thailand.

Legal provisions should be made for, and barriers lifted from, the development of mosques and the free exercise of the Islamic faith. Additionally, public relations efforts should be made to stop demonizing the faith in the larger Thai community. Such changes would allow for local teaching of the Koran, local observation of religious customs and holidays, and other cultural practices and indicia of Malay Muslim faith/culture. On a parallel course, sensitivity training for Thai government officials and administrators should be re-instated similar to the early 2000s.²⁷⁰ Such training would be particularly beneficial for law enforcement representatives in fostering better relations with and trust of police.

Transitional justice mechanisms should be put in place for the atrocities committed during the Thai “war on drugs” in accordance with recognized procedures such as investigation and prosecution, or restitution, or truth and reconciliation. Investigations and prosecutions or other transitional justice mechanisms should be pursued because impunity has been a principle cause of extremism and lack of healing among victim groups.²⁷¹

A causal model should also implement greater economic benefits. Current efforts could be intensified with greater funding. Moreover, as deleterious assimilation practices have persisted in the region for generations, certain affirmative action-type initiatives would benefit the Malay Muslim populations and foster a larger stake in the economic stability of the community and encourage self-policing. These initiatives would foster greater faith within the at-risk Malay Muslim cluster and facilitate their admission into

²⁷⁰ See Chalk, *supra* note 254, at 9 (discussing a pledge made by the Thai national government to “pledge to promote the region’s natural resources and invest greater sums in occupational training for local Malays, moves were also made to enhance police, military, and political understanding of the unique Malay Muslim way of life”).

²⁷¹ For a more extensive discussion of the value of correcting impunity, see Sarah Mazzochi, *The Age of Impunity: Using the Duty to Extradite or Prosecute and Universal Jurisdiction to End Impunity for Acts of Terrorism Once and for All*, 32 N. ILL. U. L. REV. 75, 76 (2011) (“Impunity remains one of the greatest challenges facing international peace and security today.”).

mainstream Thai society without the loss of their unique self-identity—an aspiration necessary to reinforce group certainty and assuage extremism.

Some existing positive causal factors include a growing willingness of Thai authorities to negotiate²⁷² and the implementation of special economic zones.²⁷³ These initiatives should be exploited to the extent possible to help relieve the financial hardships in the south. However, authorities must recognize the limitations of economic causal factors standing alone, without social justice issues being addressed. Economic reform is not a panacea and potentially may serve to actually dismantle peace negotiations if it is the only chip on the bargaining table. It is also subject to corruption. Indeed, the economic reform model was tried in the early 2000s and failed, in part, because of corruption.²⁷⁴ Other changes should occur with important reforms of the police, the courts, the laws, the schools and the social stigma associated with the Malay Muslims through negative political speeches²⁷⁵ and media sources.²⁷⁶

This list is not meant to be an exhaustive set of reforms but it is illustrative of the type of tailored initiatives that a causal model would use to shrink extremism. In Thailand as elsewhere, managing terrorism, or extremism, is synonymous with managing uncertainty and fear directed towards well-established social groups that collectively face perceived unfair treatment. By managing these uncertainties, counter-terrorism methodology can preclude franchise collaborations between at risk sub-state groups and

²⁷² See *Thailand Seeks Solution in Southern Region Despite Talks Disrupted by COVID-19*, THE STAR (July 28, 2020), <https://www.thestar.com.my/aseanplus/aseanplus-news/2020/07/28/thailand-seeks-solution-in-southern-region-despite-talks-disrupted-by-covid-19> [<https://perma.cc/JPR6-5YZM>] (discussing the Thai government's efforts to negotiate with "Southern Thailand's most well-armed group, Barisan Revolusi Nasional (BRN)").

²⁷³ *Southern Thailand to have special economic zone*, NEW STRAITS TIMES (Jan. 24, 2020), <https://www.nst.com.my/world/region/2020/01/559321/southern-thailand-have-special-economic-zone> [<https://perma.cc/35YS-68TP>] (discussing the Thai government's approval of "a proposal to develop a special economic zone (SEZ) in southern Thailand Songkhla's Chana district").

²⁷⁴ See MCCARGO, *supra* note **Error! Bookmark not defined.**, at 184.

²⁷⁵ See *id.* at 88 (discussing various statements made by local and national politicians with regards to the Malay Muslim population in Southern Thailand).

²⁷⁶ See BANGKOK POST, *supra* note 149.

international terrorist organizations and decrease violent terrorist activity from the bottom-up.