



Thailand

Amnesty International submission to the UN Universal Periodic Review 12th session of the UPR Working Group, October 2011

B. Normative and institutional framework of the State

National security legislation

The government frequently resorts to emergency legislation that contravenes international human rights law. This legislation includes the 2005 Emergency Decree which provides security forces with authority to detain persons without charge or trial for up to 30 days, extensive press censorship, and immunity from prosecution for officials who violate human rights in the course of carrying out their official duties.¹ The 2008 Internal Security Act extends sweeping powers to the military and security forces to restrict freedoms of expression, association and peaceful assembly, and freedom of movement. These powers apply in vague and broad terms to “any situation which is or may be a threat”.² In the context of massive protest demonstrations beginning in March 2010, the government invoked the Internal Security Act followed by the Emergency Decree in April; the latter was revoked in December 2010.

Legislation restricting freedom of expression

Since the *coup d'état* in late 2006, the government has greatly restricted freedom of expression, primarily in response to those who opposed the *coup*, supported the deposed Prime Minister, or criticized the constitutional monarchy. Amnesty International is concerned at the increased use by the authorities of the 2005 Emergency Decree, the *lèse majesté* law and the 2007 Computer-related Crimes Act in a growing trend of censorship to silence peaceful political dissent.

The *lèse majesté* law prohibits any word or act which “defames, insults or threatens the King, the Queen, the Heir-apparent, or the Regent”.³ It goes beyond permissible restrictions on freedom of expression provided for under international human rights law. The Minister of Justice has since 2009 characterized the *lèse majesté* law as a matter of national security.

Over the past four years, there has been a sharp increase in cases under the *lèse majesté* law. Based on the 2005 conviction rate (the most recent year available from the Ministry of Justice), of those charged with *lèse majesté* offences, as many as 200 persons may have been convicted and imprisoned. Nearly all charges brought against persons under the 2007 Computer-related Crimes Act have been for alleged *lèse majesté* content, with some people charged under both laws. At least five cases were brought under the Computer-related Crimes Act in 2010 for content deemed either offensive to the monarchy and/or a threat to national security, bringing the total to 15 since the Act was promulgated in 2007. This Act and the Emergency Decree have been increasingly used in monitoring of the internet for *lèse majesté* content. In June 2010, the Ministry of Information,

¹ 2005 Emergency Decree, Section 17.

² *Ibid.*, Section 3.

³ Thai Criminal Code, Article 112.

Communication and Technology announced that it had blocked access to 43,908 websites on the grounds that they violated the *lèse majesté* law and/or national security.

In 2010 Chiranuch Premchaiporn, director of an online newspaper, was arrested for comments posted on the newspaper's web forum which allegedly violated the *lèse majesté* law. She was released on bail and is on trial at the time of this writing. If she were to be sentenced, Amnesty International would consider her a prisoner of conscience.

In December 2009, Prime Minister Abhisit Vejjajiva established a panel to scrutinize enforcement of the *lèse majesté* law, which has acted to prevent a small number of cases from being prosecuted.

The death penalty

Although Thailand retains the death penalty in national law, there were no executions in 2010. In January 2010, the Minister of Interior announced a signature campaign to extend the death penalty to drug offences under three existing laws. This development contradicts the Thai government's Second National Human Rights Plan for 2009 to 2013, which proposed replacing the death penalty with life imprisonment.

Torture and other ill-treatment

The 2005 Emergency Decree, in force in the three southernmost provinces, provides for impunity for officials who violate the law "while acting in good faith". This effectively facilitates torture and other ill-treatment going unpunished. Amnesty International documented over 40 cases of torture in those provinces during 2007 and 2008 and continues to receive such reports. Thailand is a state party to the Convention against Torture and torture and ill-treatment are prohibited in the Constitution. However, Thailand has not adopted specific laws to prohibit and prevent torture and other ill-treatment. In particular, it has not passed legislation expressly criminalizing torture.

C. Promotion and protection of human rights on the ground

The death penalty

In 2009, the authorities executed by lethal injection two men, Bundit Charoenwanich and Jirawat Phumpruek, for drug trafficking, in the first executions since 2003. It has been reported that they were only given 60 minutes' notice before their executions were carried out. As of August 2010, there were 708 people on death row, 339 of them for drug offences.

Death row prisoners continue to be shackled in leg irons on arrival in prison despite a 2009 court decision (subsequently appealed) declaring it illegal. The Truth and Reconciliation Commission recommended in July 2010 that the practice be stopped immediately.

Internal armed conflict in Southern Thailand

Human rights abuses by all sides continue in the non-international armed conflict in the predominantly Muslim southern provinces of Narathiwat, Pattani, Songkhla, and Yala. The violence has led to at least 4,500 deaths since 2004. The Emergency Decree was renewed most recently in late 2010 for the 21st time since it was promulgated in July 2005. Armed groups continue to target civilians, both Buddhist and Muslim, and to carry out indiscriminate attacks.

Amnesty International continues to receive reports that the security forces subject suspects to torture and other ill-treatment. In some instances, this has led to deaths in custody. Survivors of torture report being brutally

beaten, burnt with candles, buried up to their necks in the ground, subjected to electric shocks, exposed to intense heat or cold, kicked or stomped on, and having plastic bags put over their heads until they nearly suffocate. These reports, combined with the lack of accountability for the perpetrators, are frequent and widespread and cannot be dismissed as the work of a few errant subordinates in isolated instances.

Amnesty International has also received numerous reports of torture and other ill-treatment at Ingkharayuthboriharn Army Camp in Pattani province and of unofficial detention centres where detainees are held without access to the outside world and thus particularly vulnerable to torture and other ill-treatment. Thai security authorities officially acknowledge only two detention facilities designated for suspected insurgents: Ingkharayuthboriharn Army Camp and the Forward National Police Officer Operations Centre (in Yala province). However, reports suggest that there are at least 21 other unofficial detention sites.

Throughout the seven years of the conflict, there have been no successful prosecutions of any members of the security forces for torture or other ill-treatment, with state officials protected from prosecution under Article 17 of the 2005 Emergency Decree. In August 2010, the police dropped all charges against a former paramilitary ranger alleged to have been involved in an attack in 2009 on the Al-Furqan mosque in which 10 Muslims were killed.

A further example of the entrenched impunity for the security forces is the case of Somchai Neelapaijit, a Muslim human rights lawyer, who has not been seen or heard of since March 2004. The five officers implicated in his enforced disappearance, including the only one of them who was convicted in 2006, were allowed to return to work in 2007. No disciplinary action appears to have been taken against them, while an appeal initiated by the prosecution has been repeatedly delayed and postponed.

Political crisis

A polarization of Thai society emerged in 2006, reflecting the conflict between the royalist People's Alliance for Democracy (PAD) and the United Front of Democracy against Dictatorship (UDD) (the latter is loosely affiliated with deposed Prime Minister Thaksin Shinawatra). Between 10 April and 19 May 2010, 74 protesters or passersby, 11 members of the security forces, four medics, and two journalists were killed during sometimes violent anti-government protests in Bangkok and elsewhere in the country. The security forces used unnecessary and excessive force, including lethal use of firearms and in delineated "live fire zones", killing several unarmed protesters and bystanders. Some of the protesters and elements seemingly aligned with them were also armed and used lethal force against the security forces, killing several of them. The government detained over 450 people in the wake of the protests, approximately 100 of whom remained in detention. Some have been charged with terrorism.

In earlier incidents in 2008, under a pro-Thaksin government, violence erupted on a number of occasions between PAD demonstrators and the police, resulting in several deaths and hundreds of injuries. In October 2008, police fired teargas and rubber bullets to disperse about 2,000 protesters in front of the Parliament. Some protesters fired guns, shot slingshots, and threw bricks and metal pipes. Two PAD supporters died and at least 440 others, including police, were injured in the violence.

Refugees and migrants

The Thai government has forcibly returned refugees and asylum seekers in contravention of customary international law. In January 2009, the Thai military forcibly expelled approximately 1,200 Rohingya, a Muslim ethnic minority from Myanmar, who had arrived in southwest Thailand by boat from Bangladesh and Myanmar. Hundreds of Rohingyas went missing or died after being pushed back by the security forces in

unseaworthy boats with little or no food and water. The Prime Minister called for an investigation into these incidents; however, no one has yet been held to account.

In late December 2009, Thai authorities forcibly repatriated around 4,500 Lao Hmong from a camp in Phetchabun province, as well as 158 Lao Hmong recognized as refugees by UNHCR and since November 2006 detained in Nong Khai province in overcrowded conditions. The 158 refugees had been accepted for resettlement by several countries, but were denied departure from Thailand. Among them were 87 children, some born in detention. UNHCR had not been permitted access to the larger group in Phetchabun province.

Following an influx of at least 20,000 refugees fleeing fighting in eastern Myanmar in November and December 2010, Thai authorities arbitrarily forced many of them to return to Myanmar, where they were at risk of serious human rights violations.

Migrant workers lack basic labour rights and face a range of human rights abuses, including police abuse and discrimination. In 2010, migrant workers from Myanmar who had not registered their immigration status with the Thai government before a 28 February 2010 deadline were forcibly removed to Myanmar. Some were subject to trafficking and extortion by both Thai officials and a Myanmar government-backed ethnic minority militia.

D. Recommendations for action by the State under review

Amnesty International calls on the government:

National security legislation

- To reform or repeal emergency legislation that does not comply with Thailand's obligations under international human rights law, in particular legislation restricting the right to freedom from arbitrary detention, freedoms of expression, association and peaceful assembly, and freedom of movement;
- To stop arbitrary arrest and detention and to ensure that all detainees are brought promptly before an independent judicial authority which is competent to determine the legality of their detention.

Legislation restricting freedom of expression

- To amend the *lèse majesté* law so that it complies with international law and standards, including by abolishing the provision that allows a citizen to report another citizen for alleged violation of the law and to suspend the use of the *lèse majesté* law pending such amendments;
- To end censorship of websites on the grounds of upholding the *lèse majesté* law;
- To drop all charges against online news editor Chiranuch Premchaiporn for comments posted on the web forum she administers, and against all others charged merely for peacefully expressing their non-violent views.

The death penalty

- To immediately establish a moratorium on executions with a view to abolishing the death penalty;
- To commute without delay all death sentences to terms of imprisonment;
- To enact legislation abolishing the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

Torture and other ill-treatment

- To reflect in domestic legislation the provisions of the UN Convention against Torture, in particular by expressly criminalizing torture as defined in that Convention;

- To investigate all reports of torture and other ill-treatment by military officials and others with a view to bringing to justice those responsible for such acts.

Internal armed conflict in Southern Thailand

- To carry out prompt and impartial investigations into all reports of violations of international human rights and humanitarian law and to prosecute those responsible, irrespective of rank, in proceedings which meet international standards of fairness;
- To ensure that those held in detention centres and army camps have access to lawyers, family members and adequate medical care, and to allow immediate and unfettered access to all places of detention by independent human rights monitors;
- To take immediate steps to close unofficial detention centres, including by promptly and impartially investigating all reports of such facilities operated by the security forces, and by amending the 2005 Emergency Decree to expressly prohibit unofficial places of detention;
- To clarify the fate and whereabouts of Somchai Neelapaijit and all others forcibly disappeared to ensure that those responsible for their disappearance are brought to justice;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearances and take the necessary steps effectively to implement the Convention at national level soon after ratification.

Political crisis

- To review without delay the methods used to maintain order at demonstrations and to ensure that security forces adhere to international principles on crowd dispersal and the use of force, such as the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including by using force only as a last resort and to the minimum extent necessary;
- To ensure that all complaints of human rights violations by the security forces are subject to immediate, thorough and independent investigation and the perpetrators brought to justice. Pending such investigation, to suspend from duty anyone reasonably suspected of having committed such violations;
- To ensure that the victims of human rights violations and their families can obtain full reparation.

Refugees and migrants

- To respect the principle of *non-refoulement* and to ensure that no one is expelled, returned or extradited to a country or territory where they may face serious human rights violations, in particular Myanmar or Laos;
- To investigate the forcible expulsion of Romyngyas and to ensure that those responsible for these incidents are brought to justice and that necessary steps are taken to avoid repetition of such expulsions in the future;
- To respect its obligation to allow asylum-seekers meaningful access to asylum procedures and to UNHCR and to ensure that individuals who are fleeing persecution are afforded international protection;
- To end the indefinite and arbitrary detention of refugees and to stop the detention of refugees in chronically overcrowded conditions;
- To ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol;
- To comply with its obligations under international human rights law with respect to migrant workers to ensure fair wages and equal remuneration for work, safe and healthy working conditions, and rest, leisure and reasonable limitation of working hours;
- To end all abuses faced by migrant workers, including trafficking and extortion.