

THAILAND

RESTRICTIVE ENVIRONMENT FOR HUMAN RIGHTS

*Amnesty International
Submission to the UN
Universal Periodic Review,
May 2016*

AMNESTY
INTERNATIONAL



CONTENTS

Executive summary	2
Follow up to the previous review	2
The international human rights framework.....	3
The national human rights framework	4
Interim constitution	4
Emergency legislation and special laws.....	5
Laws restricting freedom of expression and peaceful assembly	5
Promotion and protection of human rights on the ground	7
The death penalty.....	7
Enforced disappearances, torture and other ill-treatment	7
Human rights defenders	8
Refugees and asylum-seekers	8
Recommendations for action by the State under review	10

EXECUTIVE SUMMARY

This submission was prepared for the Universal Periodic Review (UPR) of Thailand taking place in May 2016. In it, Amnesty International evaluates the implementation of recommendations made in the previous cycle of the UPR.

In general, human rights protection in the country has weakened since the last review, both in law and practice. The authorities have enhanced their powers to act without judicial or parliamentary oversight and have restricted the rights to redress, freedom of expression and peaceful assembly, and fair trial.

The authorities have also expanded their powers of detention to arbitrarily detain individuals, and to hold them in incommunicado detention without adequate safeguards, thereby facilitating the continuing practice of torture and other ill-treatment.

Human rights defenders are subject to prosecution, harassment, killings and enforced disappearance as a result of their legitimate activities, and while no executions have taken place, the scope of the death penalty has been increased.

Asylum-seekers and refugees remain vulnerable to arbitrary detention in poor conditions and some have been subject to *refoulement*.

In the final section of this document, Amnesty International makes a number of recommendations to Thailand to address the human rights concerns raised in the submission.

FOLLOW UP TO THE PREVIOUS REVIEW

Since the UPR of Thailand in 2011, there has been only limited progress on recommendations accepted by the government on freedom of expression, prosecution of offences under the lèse-majesté law, asylum-seekers, refugees and migrants found at sea,¹ impunity,² and ratification of UN human rights treaties.³

Despite committing to ensure that national legislation on freedom of expression is consistent with international law,⁴ the government continues to pass and enforce legislation that penalizes the peaceful exercise of this right in a manner that is inconsistent with its international obligations.

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Thailand*, A/HRC/19/8, 8 December 2011, recommendations 89.54 (New Zealand), 89.55 (Norway), 89.56 (Norway), 89.66 (Canada), 89.68 (Canada), 89.70 (Canada), 89.71 (Brazil), 89.72. (Switzerland).

² A/HRC/19/8, recommendations 89.40 (New Zealand), 89.41 (Spain), 89.42 (France), 89.43 (Switzerland), 88.71 (United Kingdom), 88.68 (Canada), 88.66 (Austria).

³ A/HRC/19/8, recommendations 89.1 (Argentina), 89.2 (Uruguay), 89.3 (Spain), 89.4 (Austria), 89.11 (France) 89.12 (Nicaragua), 89.13 (Japan).

⁴ A/HRC/19/8, recommendations 89.25 (Hungary), 89.54 (New Zealand).

Despite the government's undertaking to ensure public and transparent proceedings in trials under Thailand's *lèse-majesté* law, ⁵such trials have often been held in camera, including in military courts.

Little progress has been made on commitments to address impunity for rights violations, ⁶and the government has not adequately met its undertakings to fulfil the protection needs of asylum-seekers and migrants. ⁷

THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The government signed the UN Convention for the Protection of All Persons from Enforced Disappearance in January 2012. While the government committed to ratify this Convention when the Human Rights Council adopted its UPR outcome in March 2012,⁸ the National Human Rights Action Plan only contains a commitment to "study" the possibility of ratification.⁹

The government has issued a standing invitation to the UN Special Procedures in line with its voluntary pledge at the 2011 UPR.¹⁰ Of 17 requests for visits by the Special Procedures,¹¹ only the visit of the Special Rapporteur on the human rights to safe drinking water and sanitation has taken place, in February 2013.

⁵ A/HRC/19/8, recommendations 89.55 (Norway).

⁶ A/HRC/19/8, recommendations 88.66 (Austria), 88.68 (Canada), 88.69 (Sweden), 89.42 (France), and 89.43 (Switzerland).

⁷ A/HRC/19/8, recommendations 88.23 (Viet Nam), 88.93 (Brazil), 88.95 (Myanmar), 88.96 (Bangladesh), 89.66 (Canada), 89.68 (New Zealand), 89.70 (Canada), 89.71 (Brazil), 89.72 (Switzerland).

⁸ Report of the Working Group on the Universal Periodic Review, Thailand, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, March 2012 A/HRC/19/8/Add.1, 4 and 5.

⁹ Ministry of Foreign Affairs, The Summary of Thailand's 3rd National Human Rights Plan (2014-2018), available at <http://www.mfa.go.th/humanrights/images/the%20summary%20of%20thailands%203rd%20national%20human%20rights%20plan%202014-2018.pdf>

¹⁰ Report of the Working Group on the Universal Periodic Review Thailand, 8 December 2011 A/HRC/19/8, 94.

¹¹ Of the visits requested by the Special Procedures, the authorities have agreed to the visits, but set no date for these, by the Special Rapporteurs on Torture and on the Sale of Children. Other outstanding requests include the UN Special Rapporteur on freedom of opinion and expression, the UN Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

The International Coordinating Committee for National Human Rights Institutions has expressed concern about the selection process of commissioners of the National Human Rights Commission of Thailand as well as its structure and functions. It has raised the possibility of downgrading its status from A to B. The work of the Commission has on occasion been hampered by a lack of cooperation from other state institutions, and limitations to its powers under the National Human Rights Commission Act.¹²

INTERIM CONSTITUTION

The military revoked the 2007 Constitution and took power in a military coup on 22 May 2014, having invoked martial law two days earlier. Since then the military administration, the National Council for Peace and Order (NCPO), has adopted a series of measures which have removed and significantly weakened the protection of human rights.

The Interim Constitution, which entered into force on 22 July 2014, lacks the provisions for respect and protection of human rights of the 2007 and 1997 Constitutions. It provides only a qualified commitment to international human rights obligations and grants effective impunity for those suspected of criminal responsibility for human rights violations.¹³ Under Article 44 it also provides sweeping powers to the executive to act without judicial or parliamentary oversight. Following the rejection of the latest Draft Constitution by the National Reform Council appointed by the National Council for Peace and Order (NCPO) in September 2015, a new Constitution should be drafted by April 2016, before being put to a four month referendum. The Interim Constitution is likely to be in place until at least September 2016.

On lifting martial law in most areas of the country on 1 April 2015 the authorities issued NCPO Order 3/2015¹⁴ which allows NCPO-appointed “Peace and Order Maintenance Officers” to detain people without charge or trial in unofficial places of detention for up to a week without any safeguards, such as access to lawyers, family or courts. Individuals face up to six months’ imprisonment and a fine if they take part in “political” gatherings of five persons or more, which are criminalised. The Order violates fair trial rights by granting jurisdiction to the military courts to try civilians charged with offences against “internal security”, “security of the monarchy”, and infringements of NCPO orders, without the right to appeal judgements handed down by military courts for acts committed during martial law.

¹² National Human Rights Commission Act BE 2542 (1999) available at: <http://www.hurights.or.jp/archives/database/nhri-law-thailand.html>

¹³ Article 48 of the Interim Constitution, available at <http://www.isranews.org/isranews-article/item/31533-translation.html>

¹⁴ NCPO Order 3/2015, unofficial translation available at <https://voicefromthais.files.wordpress.com/2015/04/order-number-3-2558-3-2015-of-the-head-of-the-ncpo-on-maintaining-public-order-and-national-security.pdf>

Actions taken by officials under the order may not be reviewed by the Administrative Court, and claims for compensation may not be brought against officers enforcing the order who act in “good faith”.

Sixteen students and activists, arrested between 24 and 26 June 2015, have been charged with violating NCPO Order 3/2015 and Article 116 of the Penal Code merely for exercising their right to peaceful assembly.

EMERGENCY LEGISLATION AND SPECIAL LAWS

In the context of the ongoing insurgency in Thailand’s three southernmost provinces there have been targeted killings of civilians by insurgent groups, torture and other ill-treatment of detainees in military custody, and excessive use of force and extrajudicial killings by security forces and defence militias. The three provinces and selected districts in Songkhla Province have been governed by special or emergency laws since 2004, including the 1914 Martial Law Act, the 2008 Internal Security Act and the 2005 Executive Decree for Public Administration in Emergency Situations.

Taken together, these laws grant powers of detention without charge or trial for up to 37 days without adequate judicial supervision. The army has used the powers allowed by the 1914 Martial Law to detain persons without charge, trial or any safeguards for up to seven days, and to torture and ill-treat detainees, predominantly in the South.

Since 22 May 2014, the authorities have used martial law powers to arbitrarily detain hundreds of people - often incommunicado - in unknown and unofficial locations, without detention safeguards. These detentions, known as “attitude adjustment”, appear to be designed to secure cooperation and prevent public opposition to official policies. This has led to a chilling effect on freedom of expression and association. Many detainees have only been released after signing onto restrictive conditions limiting their freedom of expression and movement, with imprisonment, fines and freezing of assets among the penalties for any infringement.¹⁵ The authorities have also prosecuted individuals for disobeying the order to report, and have imposed other punitive measures, including cancellation of passports.

All these laws also provide for censorship, and successive administrations have used them to restrict freedom of expression. Also the NCPO has imposed sweeping restrictions on freedom of expression, blocking and shutting down websites and community radio stations and stopping the dissemination of critical information, including in schools and universities.

LAWS RESTRICTING FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

As well as issuing orders explicitly criminalizing the exercise of the rights to freedom of peaceful assembly and expression, the authorities have also passed laws which criminalize the peaceful exercise of these rights, including the Public Assembly Act.¹⁶

¹⁵ These conditions have in many cases been enforced by constant active monitoring and questioning by military personnel of individuals’ activities and statements (including Facebook posts), overt surveillance, and the relaying of threats of legal consequences for infringements. Amnesty International interviews, 2014 and 2015.

¹⁶ The Public Assembly Act allows for criminal penalties for persons who organize public

The administration has also significantly increased the use of existing laws that restrict these rights and have allowed the mischaracterisation and prosecution of peaceful acts of expression as acts endangering national security or the monarchy.

Most prominently this has been evident through Thailand's lèse-majesté law, specifically Article 112 of the Penal Code,¹⁷ which allows for the imprisonment of individuals for any act which "defames, insults, or threatens the King, the Queen, the Heir-apparent, or the Regent" and carries up to 15 years' imprisonment for each offence. Arrests and convictions for offences under this Article have dramatically escalated. Implementing Article 112 is one of the current administration's political priorities which it maintains is necessary to security; initiatives to repeal or amend it are considered to be a threat to national security.

- Magazine editor and social activist Somyot Prueksakasemsuk is serving a sentence of eleven years' imprisonment under the lèse-majesté law. Since his arrest in 2011, he has been denied 16 bail requests, including during his appeal.¹⁸

Separate to the lèse-majesté laws, a growing numbers of prisoners of conscience have also been arbitrarily imprisoned, routinely denied bail and tried in often unfair and closed trials in military courts, with lengthy sentences of up to 60 years imprisonment.¹⁹

The authorities have also increased their application of Article 116 of the Criminal Code, relating to sedition, which allows for seven years' imprisonment.²⁰ Dozens of individuals, including students, non-governmental organization staff and former politicians, have been charged under Article 116 for their peaceful opposition to the military take-over of power.²¹

- Chaturon Chaisaeng and Sombath Boonngamanong²² are currently on trial

assemblies without informing authorities in advance. See Amnesty International, *Draft Public Assembly Act still fails to meet Thailand's International Human Rights Obligations* (Index: ASA 39/1174/2015).

¹⁷ Article 112 of the Penal Code, available at <http://www.samuihorsale.com/law-texts/thailand-penal-code.html>

¹⁸ See 'Release Activist Imprisoned for Allegedly Insulting the Monarchy', above.

¹⁹ See Amnesty International, *Record Lèse Majesté Conviction Highlights Growing Extremes of Repression in Thailand* (Index: ASA 39/2253/2015); Amnesty International, *Preposterous 25-year prison sentence for criticizing royal family*, 31 March 2015, Amnesty International, *Thailand lèse majesté convictions Assault on Freedom*, 23 February 2015, Amnesty International, *Release Activist Imprisoned for Allegedly Insulting the Monarchy*, 23 September 2014.

²⁰ Penal Code, Crimes Against the Security of the Nation, Article 116 (2), which allows for seven years' imprisonment <http://www.samuihorsale.com/law-texts/thailand-penal-code.html>.

²¹ 'Amnuay threatens to arrest people who post anti-coup messages', Nation (Thailand), 12 June 2014, available at <http://www.nationmultimedia.com/politics/Amnuay-threatens-to-arrest-people-who-post-anti-co-30236062.html>

²² See Amnesty International, *Attitude Adjustment, 100 days under Martial Law* (Index: ASA 39/011/2014).

for sedition in relation to their criticism of the May 2014 coup and their public refusal in Facebook posts to obey orders by the authorities to report for arbitrary detention.

Article 14 of the Computer Crimes Act is also routinely used against individuals accused of using computers to access or post statements of peaceful dissent, criminal defamation, or that are deemed offensive to the monarchy.

- Charges have been laid under the Act against individuals who have posted Facebook messages or circulated images satirising the monarchy, and who have published allegations of human rights violations,

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

THE DEATH PENALTY

The scope of crimes for which the death penalty is applicable has been expanded, including to allow the death penalty for non-Thai nationals for corruption crimes.²³ While no executions have taken place, the government has not placed an official moratorium on executions. The government has included abolition of the death penalty in the National Human Rights Action Plan 2014-2018, but with the provision that it be subject to parliamentary debate. Following a ruling by the Supreme Administrative Court in July 2015, the Corrections Department may hold convicts on death row in permanent shackles.

ENFORCED DISAPPEARANCES, TORTURE AND OTHER ILL-TREATMENT

Draft legislation criminalizing torture and enforced disappearances has been pending approval by the Cabinet since January 2015. While it adopts the definition of torture contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as incorporating other provisions of the Convention, the draft does not include measures for a fully independent investigative mechanism.

More than 80 cases are currently outstanding with the UN Working Group on Enforced or Involuntary Disappearances as of February 2015; some dating back to 1992.²⁴ Yet no-one has been prosecuted or convicted for the crime of enforced

²³ Organic Act on Counter Corruption B.E. 2542 (1999), section 123/2, amended on 12 July 2015

²⁴ Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, 10 August 2015, A/HRC/30/38. The figure includes human rights activists, students and protesters at the May 1993 pro-democracy protests, persons disappeared during a 2003 official anti-drug law enforcement campaign, known as the War on Drugs. See Enforced Disappearances in Thailand, Justice for Peace Foundation, May 2012, available at http://justiceforpeace.org/wp-content/uploads/2012/06/Enforced_Disappearances_in_Thailand_03.pdf, Amnesty International, *10 years on still no justice for May 1992 Disappearances*, May 2002, Amnesty International, *Thailand: The "disappearance" of labour leader Tanong Pho-arn* (Index: ASA

disappearance.

Amnesty International continues to document instances of torture and other ill-treatment by both police and the security forces,²⁵ particularly in the context of detention under martial law powers without access to the outside world. Amnesty International considers that in a number of cases the authorities have detained individuals unlawfully beyond the period allowed under martial law, in order to let the visible evidence of torture fade.

Officials routinely fail to investigate allegations of torture and other ill-treatment, and victims and their lawyers often encounter difficulties in gathering evidence, including accessing independent medical examinations to document their injuries.

HUMAN RIGHTS DEFENDERS

Human rights defenders, including lawyers and trade union, community and environmental activists, face judicial harassment, including in the form of criminal defamation suits. They have also been subjected to enforced disappearances, violent attack²⁶ and killings.²⁷

Human rights defenders and other members of civil society also continue to be adversely affected by the current restrictions on freedom of peaceful assembly and expression. These restrictions have led to individuals being penalized for peaceful assembly, and state interference at scores of private and public meetings.²⁸

- Thai ethnic Karen human rights defender Pholachi “Billy” Rakchongcharoen is believed to have been forcibly disappeared, after being last seen in the custody of Kaengkrachan National Park Officials on 17 April 2014.²⁹

REFUGEES AND ASYLUM-SEEKERS

The authorities continue to forcibly return individuals to countries where they are at real risk of serious human rights violations or abuses, in violation of the principle of *non-refoulement*.

39/007/2001).

²⁵ See ‘Submission to the UN Committee against Torture’, Amnesty International report, April 2014; Disappearance fears for man in Thailand, Amnesty International Urgent Action 197/14, ASA 39/013/2014, Attitude Adjustment, Amnesty International report, September 2014; Martial Law Detainees at Risk of Torture, Amnesty International Urgent Action 65/15, ASA 39/1266/2015, 20 March 2015.

²⁶ Amnesty International, *Fears for Villagers after Attack in Thailand* (Index: ASA 39/006/2014).

²⁷ See *Thailand: Murder of Human Rights Defenders underline need for Protection*, United Nations High Commissioner for Human Rights, 9 December 2014, available at <http://www.un.org/apps/news/story.asp?NewsID=49551#.VgIEG8tViko>, Joint Open letter to the Prime Minister of Thailand on the killing of Chai Bunthonglek, 11 March 2015.

²⁸ See Amnesty International, *Military Shutdown of Event Highlights Free Speech Crackdown*, 4 June 2015, and Amnesty International, *Attitude Adjustment*, p.43.

²⁹ Amnesty International, Urgent Action, *Human Rights Activist Missing in Thailand* (Index: ASA 39/004/2014).

- Ali Ahmed Ibrahim Haroon, 21, a Bahraini national, was forcibly returned to Bahrain from Thailand on 18 December 2014. There are credible reports that he was tortured on return.³⁰
- In December 2013, seven Khmer Khrom men, some of whom were asylum-seekers, were arrested by Thai police accompanied by Cambodian government personnel and handed over to Cambodian officials at the Thai-Cambodian border. Some of the men have testified that they were tortured during interrogation in Cambodia to force them to confess to plotting against the Cambodian authorities. The group is serving sentences of between five and nine years' imprisonment, handed down in a trial widely believed to have been unfair.³¹
- On 13 November 2015 Jiang Yefei and Dong Guangping, two Chinese activists recognised as refugees by UNHCR were transferred from Thailand to China. Their families have not received official notice of their removal nor information about their whereabouts since their forcible return to China. On 26 November 2015, the pair were seen on state media news agency CCTV "confessing" to human-trafficking offences and "admitting" that Jiang Yefei had assisted Dong Guangping to cross the border "illegally" into Thailand. When watching the footage, their families found the men's facial expression and tone of voice to be suspiciously different from usual, showing signs of pains and stress, and raised the allegation that the men had been tortured to "confess".³²

Thailand is not a party to the 1951 Convention relating to the Status of Refugees and still has no domestic legal framework recognizing the right to seek international protection. Asylum-seekers report being denied access to screening procedures and UNHCR.³³ The authorities increasingly use discretionary powers under the 1979 Immigration Act to detain asylum-seekers and refugees, including children, indefinitely and arbitrarily.³⁴

³⁰ Amnesty International, *Behind the Rhetoric, Human rights abuses in Bahrain continue unabated* (Index: MDE 11/1396/2015), p. 50; Amnesty International, *Bahrain: Trial of 57 opened amidst allegations of abuse during prison riot* (Index: MDE 11/2163/2015).

³¹ Human Rights Watch, *Cambodia: Drop 'Traacherous Plotting' Case Dismiss Charges Against 13 Accused of Planning Government Overthrow*, 9 April 2014, available at <https://www.hrw.org/news/2014/04/09/cambodia-drop-treacherous-plotting-case>, The Cambodia Daily, *KNLF Group Claim Confessions Came by Torture*, 28 April 2015, available at <https://www.cambodiadaily.com/news/KNLF-group-claim-confessions-came-by-torture-82799>

³² Amnesty International Urgent Action appeal, People's Republic of China : *Deported Activists at Risk of Torture*, 19 November 2015, available at <https://www.amnesty.or.jp/en/getinvolved/ua/ua/2015ua259.html>

Amnesty International, Request for Information on Activists Transferred from Thailand to China
http://www.amnesty.eu/content/assets/Docs_2016/Letters/B1731_Chinese_activists_transfer_from_Thailand_19012016.pdf

³³ Telephone interview with asylum-seeker, Amnesty International March 2014

³⁴ Interviews and correspondence received by Amnesty International, 2014-2015, Human Rights Watch, *Release Dozens of Asylum Seekers*, 16 September 2015 available at: <https://www.hrw.org/news/2015/09/16/thailand-release-dozens-asylum-seekers>

The government has both forcibly expelled and pushed back migrants and asylum seekers – in particular Rohingya from Myanmar - arriving by boat, in violation of the principle of *non-refoulement*.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Thailand to:

Interim Constitution

- Repeal Section 44 of the Interim Constitution and to restore constitutional human rights protection;
- Repeal National Council for Peace and Order 3/2015, and other such orders arbitrarily restricting freedom of expression, association and peaceful assembly, freedom of movement, and those allowing for the trial of civilians in military courts.

Emergency and Special Laws

- Repeal the 1914 Martial Law Act and the 2005 Emergency Decree, or amend these laws to remove all provisions violating human rights, in particular those authorizing the army to detain persons arbitrarily and facilitating impunity for the perpetrators of human rights violations;
- Ensure that all detainees are allowed contact with family members, lawyers, and independent doctors, and that the provision of these safeguards is effectively monitored;
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to allow immediate and unfettered access to all places of detention by independent human rights monitors;
- End arbitrary arrest and detention, to lift all conditions imposed on individuals released from “attitude adjustment” and bring all detainees promptly before an independent, civilian judicial authority.

Legislation on freedom of expression, association and assembly

- Guarantee the right to peaceful exercise of the rights to freedom of expression, association and assembly, and to immediately and unconditionally release persons detained or imprisoned for their exercise of these rights;
- Unconditionally expunge sentences, quash convictions, and drop charges against anyone prosecuted for exercising their rights to freedom of expression, association and assembly;
- Repeal laws providing for criminal defamation, and to amend the Computer Crimes Act and Article 112 of the Penal Code to ensure that they do not penalize the exercise of freedom of expression.

The death penalty

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

Enforced disappearance, torture and other ill-treatment

- Enact domestic legislation in line with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including expressly criminalizing torture as defined in that Convention;
- Ratify the International Convention on the Protection of All Persons against Enforced Disappearance and to implement its provisions in national legislation;
- Clarify the fate and whereabouts of those forcibly disappeared and to ensure that those responsible for their disappearance are brought to justice;
- Ensure that all complaints of human rights violations by the police and security forces are subject to immediate, thorough and independent investigation and that the perpetrators are brought to justice in a civilian court. Pending such investigation, to suspend from duty anyone reasonably suspected of having committed such violations;
- Ensure that the victims of human rights violations and their families can obtain full reparation.

Refugees and asylum-seekers

- Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and to process all requests for asylum in prompt and effective proceedings;
- Strictly abide by the principle of *non-refoulement*, ensuring that no one is forcibly transferred or returned to a country or territory where they would be at real risk of serious human rights violations or abuses;
- End the arbitrary detention of refugees and asylum-seekers and to end all detention of children for migration-related purposes.