



THAILAND: LIFT RIGHTS RESTRICTIONS DURING POLITICAL TRANSITION

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AMNESTY
INTERNATIONAL



On 7 August 2016, Thailand will hold a national referendum on a draft Constitution prepared by a military-appointed Constitutional Drafting Committee. The referendum is a key component of Thailand's "3-part road map" for political transition, announced by the National Council for Peace and Order (NCPO) – the military body that rules Thailand – shortly after it came to power in a military coup on 22 May 2014. In recent months, Thai authorities have cracked down on individuals and organizations that have criticized the draft Constitution or called into question the legitimacy of the referendum. This brief describes Amnesty International's concerns regarding restrictions on the rights to freedom of expression, assembly and association in the lead up to the referendum.

RESTRICTIVE DECREES AND LEGISLATION

Amnesty International has repeatedly raised concerns about laws and decrees promulgated by the Royal Thai Government that violate human rights, including by excessively restricting certain rights beyond what international law allows, and has urged that they be amended or repealed in order to ensure consistency with Thailand's obligations.¹ Our organization accordingly welcomes the government's announcement on 28 May 2016 of a plan to lift requirements for politicians to seek official permission to travel abroad in order "to reflect the improved political situation and to ease political tensions ahead of the referendum".²

Prime Minister Prayut Chan-Ocha has recently made statements that his administration does not "intend to infringe upon anyone's rights" and that he values "speaking out freely, without breaking the law" as the foundation of a strong society.³ As such, Amnesty International reiterates our call on the government to repeal, amend and in the meantime cease enforcement of all laws and edicts that unnecessarily and unjustifiably restrict or penalise the peaceful exercise of the rights to freedom of expression, assembly and association. At least ten states made similar recommendations to the Royal Thai Government at the 25th Universal Periodic Review in May 2016.⁴

Amnesty International therefore urges the government to take action to address shortcomings in the following laws and decrees:

- **Head of NCPO Order No. 3/2558 (2015),**⁵ which among other things prohibits "political gatherings of five or more persons" and provides for criminal penalties of up to six months imprisonment for non-compliance. Order No. 3/2558 also empowers military officials to block the distribution of articles, books, or other publications when there is a threat to "national security or public order". Amnesty International regrets that this law arbitrarily and excessively restricts the exercise of the human rights to freedom of expression, assembly, and association. The Order has allowed appointed military 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

¹ See Amnesty International, *Thailand: Attitude Adjustment: 100 Days Under Martial Law* (Index number: ASA 39/011/2014), 11 September 2014, available at <https://www.amnesty.org/en/documents/ASA39/011/2014/en/>.

² "Junta wins praise for plan to lift travel ban," *The Nation*, 29 May 2016, available at <http://www.nationmultimedia.com/webmobile/politics/Junta-wins-praise-for-plan-to-lift-travel-ban-30286927.html>.

³ "National Broadcast by General Prayut Chan-o-cha, Prime Minister," Royal Thai Government, 1 July 2016, available at <http://www.thaigov.go.th/index.php/th/speech-2/item/104765-id>.

⁴ Human Rights Council, *Draft report of the Working Group of the Universal Periodic Review, Thailand*, UN Doc. No. A/HRC/WG.6/25/L.13.

⁵ Head of NCPO Order No. 3/2558, "The Order Replacing Martial Law," 1 April 2015.

or courts. In practice, this Order has already been used to prosecute individuals involved in peaceful protests and other public gatherings, as well as to arbitrarily detain peaceful critics.

- **The Constitutional Referendum Act (2016),**⁶ which governs the administration of the 7 August referendum and has been applied by the government in a broad and arbitrary manner to target those opposing the draft Constitution. Article 61 of the Act, which provides for up to 10 years' imprisonment for "anyone who disseminates text, pictures or sounds that are inconsistent with the truth or in a violent, aggressive, rude, inciting or threatening manner aimed at preventing a voter from casting a ballot or vote in any direction or to not vote," has been used to charge individuals for peacefully exercising their human rights to freedom of expression and assembly. Amnesty International is gravely concerned about the role that this Act has played in unjustifiably restricting rights in advance of the referendum.
- **NCPO Announcement 39/2557 (2014)** and its annex,⁷ which restrict the political activities of a wide range of individuals, including politicians and civil society representatives, after their release from detention. Violations of these restrictions carry a penalty of up to two years' imprisonment. Amnesty International is concerned that these provisions unjustifiably restrict, and thus violate, the human rights of those who have previously been detained and have a chilling effect on others.
- **Head of NCPO Announcement 41/2559 (2016),**⁸ which empowers the independent National Broadcasting and Telecommunications Commission (NBTC) to shut down television or radio stations for violations of NCPO Orders 97/2557 (2014) and 103/2557 (2014) and does not include a right of appeal. These orders prohibit material deemed to be detrimental to the political system, the monarchy or national security, "dishonest" criticisms of the NCPO, and calls to gather to "oppose" state authorities. Amnesty International is concerned that the broad censorship powers granted to the NBTC, combined with the vague language concerning prohibited speech, may lead to sweeping restrictions on speech and violations of the human right to freedom of expression.

ARREST, DETENTION AND PROSECUTION

In recent months, Thai authorities have used Head of NCPO Order No. 3/2558 and the Constitutional Referendum Act to arbitrarily detain, arrest, charge and prosecute individuals who have participated in peaceful public activities relating to the referendum. Amnesty International notes with concern the 23 June 2016 arrest in Samut Prakhon Province of 13 students and activists who were distributing leaflets as part of a "Vote No" campaign.⁹ All 13 face up to ten years' and six months' imprisonment under the Constitutional Referendum Act and Order No. 3/2558.

⁶ Constitutional Referendum Act of 2016.

⁷ Announcement of the National Council for Peace and Order (NCPO) No. 39/2557, Subject: Conditions for the release of individuals summoned by the NCPO, 25 May 2014, available at <http://www.thaigov.go.th/en/announcement-2/item/83708-id83708.html>; Annex to the Announcement of the National Council for Peace and Order (NCPO) No. 40/2557, available at <http://www.thaigov.go.th/en/announcement-2/item/83709-id83709.html>.

⁸ Head of NCPO Announcement 41/2559, 13 July 2016.

⁹ Amnesty International, "13 Peaceful Activists Facing Trial" (Index: ASA 39/4386/2016), Urgent Action, 4 July 2016, available at <https://www.amnesty.org/en/documents/asa39/4386/2016/en/>.

The arrest of four student activists and a journalist on 10 July 2016 raises further questions about the Royal Thai Government's commitment to respect and protect human rights in advance of the referendum. All five have been released on bail but now face charges under Article 61 of the Constitutional Referendum Act. It has been reported that three of the student activists were arrested after police searched their car in Ratchaburi Province and found materials deemed to be critical of the draft Constitution.¹⁰ The journalist, Taweesak Kerdpoka, was reportedly arrested after being found in the car with the activists, despite the fact that he was reporting on, rather than participating in, the students' activities.¹¹

Amnesty International is also concerned about the government's decision to charge the Chairman of the United Front for Democracy in Dictatorship (UDD) and 18 other leaders of the political group with violating Order No. 3/2558 by holding a peaceful ceremony at their headquarters to launch a referendum monitoring initiative.¹² Authorities have also closed UDD monitoring centres across the country.

Amnesty International also notes that under NCPO rule numerous activists, politicians, human rights defenders and others have been arrested and prosecuted for peacefully expressing opinions on subjects not directly related to the upcoming constitutional referendum. These individuals include those protesting against military rule, commemorating political anniversaries, satirizing government officials, and expressing support for particular political movements.¹³ In addition to the laws and orders described above, provisions in Thailand's penal code which relate to sedition, criminal defamation and insulting the monarchy as well as the Computer Crimes Act have been extensively used to prosecute these individuals.¹⁴

Amnesty International urges the Royal Thai Government to immediately and unconditionally release and drop charges against all individuals being prosecuted solely for peacefully exercising their rights to expression, assembly and association and to repeal or reform all laws and decrees that restrict the exercise of these rights beyond what is allowed under international human rights law.

OBSTRUCTION OF PUBLIC DIALOGUE AND REFERENDUM MONITORING

Amnesty International is concerned about actions taken by the Royal Thai Government to ban or discourage public activities relating to the upcoming constitutional referendum. Authorities

¹⁰ Human Rights Watch, "Thailand: Activists, Journalist Arrested for Vote-No Campaign," press release, 12 July 2016, available at <https://www.hrw.org/news/2016/07/12/thailand-activists-journalist-arrested-vote-no-campaign>.

¹¹ Reporters without Borders, "RSF urges Thai junta to drop charges against website reporter," press release, 11 July 2016, available at <https://rsf.org/en/news/rsf-urges-thai-junta-drop-charges-against-website-reporter>.

¹² Human Rights Watch, "Thailand: Junta Bans Referendum Monitoring," press release, 21 June 2016, available at <https://www.hrw.org/news/2016/06/21/thailand-junta-bans-referendum-monitoring>.

¹³ See, for example, Amnesty International, "Activists Face 5 Years for Reporting Torture" (Index: ASA 39/4292/2016) Urgent Action, 21 June 2016, available at <https://www.amnesty.org/en/documents/asa39/4292/2016/en/>; Amnesty International, "Eight Facebook Users Charged, Awaiting Trial" (Index: ASA 39/4163/2016), Urgent Action, 3 June 2016, available at <https://www.amnesty.org/en/documents/asa39/4163/2016/en/>; Amnesty International, "Peaceful Activists Arrested, Facing Charges" (Index: ASA 39/3289/2016), Urgent Action, 22 January 2016, available at <https://www.amnesty.org/en/documents/asa39/3289/2016/en/>; Amnesty International, "Thailand: Record lèse-majesté sentences highlight growing extremes of repression in Thailand" (Index: ASA 39/2253/2015), public statement, 7 August 2015, available at <https://www.amnesty.org/en/documents/asa39/2253/2015/en/>; Amnesty International, "Student Protesters Released, but Face Trial" (Index: ASA 39/2066/2015), Urgent Action, available at <https://www.amnesty.org/en/documents/asa39/2066/2015/en/>.

¹⁴ Thailand Criminal Code, B.E. 2499 (1956), art. 112, 116, and 326; Computer Crimes Act, B.E., 2550 (2007).

have cancelled several public events involving discussion of the draft Constitution and upcoming referendum and have reportedly monitored and harassed individuals who have taken part in peaceful public activities concerning the referendum.¹⁵ Additionally, Amnesty International regrets the government's decision to block the UDD's independent referendum monitoring initiative and to charge those involved.

Amnesty International is concerned about recent statements reportedly made by government officials that have further undermined the government's stated commitment to upholding freedom of expression. On 19 April 2016, the Prime Minister reportedly responded to a question about critics of the draft Constitution by stating:

They have no rights to say that they disagree [with the draft Constitution] ... I don't allow anyone to debate or hold a press conference about the draft Constitution. Yet they still disobey my orders. They will be arrested and jailed for 10 years. No one will be exempted when the Referendum Act becomes effective [after announcement in the Royal Gazette]. Not even the media. Why don't people respect the law instead of asking for democracy and human rights all the time?¹⁶

On 18 April 2016, Deputy Prime Minister Prawit Wongsuwan reportedly stated, "You can like or dislike [the draft Constitution] but don't express it [to the public] and keep it inside your head. Those wearing 'Vote No' or 'Vote Yes' T-shirts will have them taken off."¹⁷

Amnesty International calls on the Royal Thai Government to actively support and protect the free exercise of rights and freedoms and to create an environment in which individuals and groups can confidently share ideas and express their opinions regarding the upcoming Constitutional referendum.

THAILAND'S OBLIGATIONS UNDER INTERNATIONAL LAW

As a state party to the International Covenant on Civil and Political Rights (ICCPR), Thailand is obligated to respect, protect and fulfil, among other human rights, the rights to freedom of expression, peaceful assembly and association.¹⁸

While international human rights law allows states to impose certain restrictions on the rights to freedom of expression, assembly and association, any such restrictions are only permissible if they are: (1) provided for by law, (2) imposed for the purpose of protecting certain public interests – including national security or public safety, public order, protection of public health or morals – or the rights and freedoms of others, and (3) demonstrably necessary for

¹⁵ "Military orders ban on seminar on draft charter," *Prachatai English*, 4 April 2016, available at <http://prachatai.com/english/node/6004>; "Seminar on draft charter aborted over junta's political gathering ban," *Prachatai English*, 27 February 2016, available at <http://prachatai.org/english/node/5889>; "Group tells NCPO 'stop the intimidation' as events shut," *The Nation*, 15 February 2016, available at <http://www.nationmultimedia.com/politics/Groups-tells-NCPO-stop-the-intimidation-as-events--30279305.html>; Janjira Linthong, "Interview with activist challenging Thai junta on referendum," *Prachatai English*, 20 April 2016, available at <http://prachatai.org/english/node/6056>.

¹⁶ Hanis Maketab, "Thai junta makes it clear it is not interested in democracy," *Asian Correspondent*, 21 April 2016, available at <https://asiancorrespondent.com/2016/04/thai-junta-makes-it-clear-it-is-not-interested-in-democracy/>.

¹⁷ "Govt bans campaigns, T-shirts on charter vote," *The Nation*, 19 April 2016, available at <http://www.nationmultimedia.com/politics/Govt-bans-campaigns-T-shirts-on-charter-vote-30284223.html>.

¹⁸ International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, art 19, 21, and 22.

such a purpose.¹⁹ Any restrictions that do not meet all of these requirements constitute violations of the rights.²⁰

In relation to the freedom of expression, the UN Human Rights Committee has stated:

When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.²¹

Amnesty International is deeply concerned that both the language of the laws and orders highlighted in this brief and their application in practice fail to meet these requirements. As a result, the Royal Thai Government has repeatedly violated human rights, both through the arrest, prosecution and imprisonment of those exercising their rights and through the creation of an environment where people fear to express their opinions, whether on the draft Constitution or on public matters generally.

Amnesty International urges the government to address the long-standing concerns outlined in this memorandum and ensure that the upcoming constitutional referendum is held in an environment where all individuals enjoy the rights to freedom of expression, peaceful assembly and association.

¹⁹ ICCPR, Articles 19, 21, and 22.

²⁰ See Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (2011), paras. 21-36.

²¹ Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (2011), para. 35.

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MATTERS TO US ALL.**

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25 July 2016

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Dear Prime Minister,

HUMAN RIGHTS CONCERNS IN THE RUN-UP TO THE CONSTITUTIONAL REFERENDUM

I write to you, on behalf of Amnesty International, as your government prepares for a public referendum on a draft constitution, a key component of Thailand's "3-part road map" for political transition leading to elections in 2017.

When the National Council for Peace and Order (NCPO) announced the "3 part road map" in June 2014, it indicated that restrictions on rights put in place following the 22 May 2014 coup would be temporary.¹ In the immediate aftermath of the coup, and on several occasions since, Amnesty International has raised concerns that - even as temporary measures - many of these restrictions amount to human rights violations and as such are unacceptable. Amnesty International is increasingly concerned that the Royal Thai Government continues, in law and in practice, to excessively, unnecessarily and unjustifiably restrict individuals' human rights, in particular the rights to freedom of expression, assembly and association, human rights that Thailand is obliged to respect and protect under Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR).

Prior to the referendum on 7 August 2016 and the implementation of any other plans for political transition, Amnesty International urges your government to take long overdue measures to ensure that individuals may freely and peacefully exercise their human rights without fear of harassment, arbitrary arrest, detention or prosecution. In particular, I urge you to allow individuals to freely receive and impart information; to engage in public debate and campaigns concerning the draft Constitution; to peacefully gather and demonstrate; and to express dissenting viewpoints. Additionally, the media must also be allowed to freely publish information and disseminate diverse opinions - including criticism of the draft Constitution - without fear of retribution.

Amnesty International is also gravely concerned about reports of the arbitrary detention, arrest and prosecution of up to 113 persons involved in campaigns and activities relating to the referendum and the recent arrest of a journalist who was reporting on such campaigns.² I urge your government to drop

¹ National Broadcast by General Prayut Chan-Ocha, Head of National Council for Peace and Order, 30 May 2014, available at <http://www.mfa.go.th/main/en/media-center/3756/46174-National-Broadcast-by-General-Prayut-Chan-O-Cha.-H.html>.

² Thai Lawyers for Human Rights, "No Freedom, No Fairness: Running a Campaign at the Expense of Your Freedom: A review of violations of human rights prior to the Constitutional Referendum in Thailand," 15 July 2016, available at <http://www.tlhr2014.com/th/?p=1198>; Amnesty International, Urgent Action, "Thailand: 13 Peaceful Activists Facing Trial" (Index: ASA 39/4386/2016), Urgent Action, 4 July 2016, available at <https://www.amnesty.org/en/documents/asa39/4386/2016/en/>; Amnesty International, "Prisoner of Conscience Must Be Released" (Index: ASA 39/3866/2016), 19 April 2016, available at <https://www.amnesty.org/download/Documents/ASA3338662016ENGLISH.pdf>; "Prachatai reporter arrested along

all charges against these individuals and expunge any convictions handed down on individuals for the peaceful exercise of their rights.

Amnesty International has repeatedly raised concerns about laws and decrees promulgated by your administration that violate human rights, including by excessively restricting certain rights beyond what international human rights law allows, and has urged that they be amended or repealed in order to ensure consistency with Thailand's obligations under international human rights law.³

Amnesty International urges the Royal Thai Government to address the long-standing concerns outlined in the attached briefer, and ensure that the upcoming constitutional referendum is held in an environment where all individuals enjoy the rights to freedom of expression, peaceful assembly, and association.

Sincerely,

A handwritten signature in black ink, appearing to read 'Salil Shetty', with a horizontal line underneath the name.

Salil Shetty
Secretary General

with activists," *Bangkok Post*, 10 July 2016, available at <http://www.bangkokpost.com/news/politics/1032541/prachatai-reporter-arrested-along-with-activists>.

³ See Amnesty International, *Thailand: Attitude Adjustment: 100 Days Under Martial Law* (Index number: ASA 39/011/2014), 11 September 2014, available at <https://www.amnesty.org/en/documents/ASA39/011/2014/en/>.