



# THAILAND

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

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AMNESTY  
INTERNATIONAL



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# 1. INTRODUCTION

Amnesty International provides this submission to the United Nations (UN) Human Rights Committee (the Committee) in advance of the examination of the second periodic report of Thailand<sup>1</sup> at the 119<sup>th</sup> session of the Committee scheduled for March 2017.

The submission features information in relation to Amnesty International's research on torture and other ill-treatment as well as restrictions on the rights to freedom of expression, association and peaceful assembly.

## 2. CONSTITUTIONAL AND LEGAL FRAMEWORK AND STATES OF EMERGENCY (ARTS. 2 & 4)

Both constitutional and legal protection of Covenant rights have weakened considerably during the review period.

The 2005 Emergency Decree on Public Administration in Emergency Situations, also known as the Emergency Decree, and the 1914 Martial Law Act have been applied concurrently in Pattani, Yala and Narathiwat Provinces in southern Thailand since 2006. Additionally, the Internal Security Act has been applied in four districts of Songkhla Province since 2009 and in other parts of the country on an ad hoc basis to deal with crises and unrest.

During Thailand's previous review, the Committee expressed concern that the Emergency Decree does not explicitly specify or place sufficient limits on derogations to Covenant rights.<sup>2</sup> The 1914 Martial Law Act and the Emergency Decree have facilitated arbitrary arrest and detention, including by allowing detention without charge in unofficial places of detention for periods of up to 37 days without judicial oversight or other safeguards provided by Thai law.<sup>3</sup> Detainees have often suffered torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) during these periods of detention.<sup>4</sup>

On 20 May 2014, two days before the coup that brought the army to power, in the form of the National Council for Peace and Order (NCPO), the army Commander-in-Chief declared nationwide martial law under the 1914 Martial Law Act. Despite the immediate, severe restrictions on rights under the Covenant imposed by martial law, Thailand delayed notification of its derogation from Covenant provisions until 3 July 2014. On that date, it notified the UN Secretary General of its intent to derogate from Articles 12(1), 14(5), 19 and 21 of the Covenant.<sup>5</sup> Amnesty International is concerned that Thailand has not yet rescinded this communication and considers that continued derogation is not justified by the current situation in the country.<sup>6</sup>

Thailand's Interim Constitution, in force since July 2014, lacks human rights protections contained in previous constitutions, provides only a qualified commitment to international obligations, and contains immunity provisions that could prevent the provision of redress for violations of the Covenant. Additionally, Article 44 of the Interim Constitution grants sweeping powers to the head of the military government to exercise executive, legislative or judicial powers without judicial or parliamentary oversight.<sup>7</sup> The government has used these powers to issue a number of orders that restrict rights guaranteed by the Covenant, including Head of NCPO Order No. 3/2015, which replaces, but in essence replicates and perpetuates, the Army's powers under the Martial Law Act (1914), including the power to arbitrarily detain individuals for up to seven days and the criminalization of "political gatherings" of five or more persons.

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<sup>1</sup> Human Rights Committee, *Second periodic reports of States parties due in 2009: Thailand*, UN Doc. CCPR/C/THA/2, 5 September 2015.

<sup>2</sup> Human Rights Committee, *Concluding Observations of the Human Rights Committee*, UN Doc. CCPR/CO/84/THA, 8 July 2005.

<sup>3</sup> Amnesty International, *Renewed emergency legislation leaves southern Thailand in human rights limbo*, 21 December 2012, available at <https://www.amnesty.org/en/latest/news/2012/12/renewed-emergency-legislation-leaves-southern-thailand-human-rights-limbo/>.

<sup>4</sup> Amnesty International, *"Make Him Speak by Tomorrow": Torture and Other Ill-Treatment in Thailand*, ASA 39/4747/2016, 28 September 2016, available at <https://www.amnesty.org/en/documents/asa39/4747/2016/en/>.

<sup>5</sup> Permanent Mission of Thailand to the United Nations, *Thailand: Notification Under Article 4(3)*, New York, 3 July 2014, available at <https://treaties.un.org/doc/Publication/CN/2014/CN.479.2014-Eng.pdf>.

<sup>6</sup> Amnesty International, *Thailand: Post-coup violations continue: is a "temporary situation" becoming chronic? Amnesty International's written statement to the 28th session of the UN Human Rights Council (2-27 March 2015)*, 20 February 2015, available at <https://www.amnesty.org/en/documents/asa39/1042/2015/en/>.

<sup>7</sup> Amnesty International, *Thailand: Attitude Adjustment: 100 Days under Martial Law*, ASA 39/011/2014, September 2015, available at <https://www.amnesty.org/en/documents/ASA39/011/2014/en/>

The 2016 Draft Constitution,<sup>8</sup> expected to come into force in early 2017, provides in Article 279 that “announcements, orders and acts” by the military authorities are deemed “constitutional and lawful” and “continue to be in force under this Constitution” unless repealed by a legislative Act or executive order. Moreover, under Article 265 of the Draft Constitution, the Head of the NCPO maintains his powers, which include the power to issue orders such as those describe in this submission pending the formation of a new government following elections. Article 279 thus provide a sweeping *a priori* constitutional legitimacy to any such future acts. Amnesty International is deeply concerned that this has the effect of perpetuating systematic violations of the Covenant.

The Draft Constitution was drafted and approved in the context of far-reaching restrictions on human rights, including those imposed by the 2015 Organic Act on the Referendum for the Draft Constitution, under which the Constitution was approved by referendum on 7 August 2016.<sup>9</sup> That law restricted legitimate public debate concerning the Draft Constitution by imposing criminal penalties, including up to ten years imprisonment, for communications “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.” This provision was broadly applied against individuals campaigning against the Draft Constitution prior to the referendum.

The Draft Constitution provides for a number of human rights that are also protected by the Covenant. However, all rights, including those which under the Covenant are non-derogable, are subject to severe restrictions which could be considered to be contrary to the Covenant's object and purpose. Article 25 provides, in part:

Where provisions of the Constitution are specifically enacted to protect the rights and liberties of the Thai people and no act is prohibited or restricted by the Constitution or other laws, a person shall have right and liberty to commit such act and be protected under the Constitution in so far as the exercise of such right or liberty does not affect or harm to the security of the State, public order or good morals of people , and is not in violation of the rights and liberties of other persons.

Thailand acceded to the United Nations Convention against Torture (UNCAT) in October 2007 and signed the International Convention for the Protection of all Persons from Enforced Disappearance (Convention against Enforced Disappearance) in 2012. Thailand has since made welcome undertakings to ratify the both the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Authorities have proposed to define and penalize torture and enforced disappearance in the draft Prevention and Suppression of Torture and Enforced Disappearance Act. The current version of the Draft Act, which has been in preparation since 2013, incorporates some elements of the two relevant Conventions, including by referencing the non-derogable nature of the prohibition on torture and enforced disappearances. However, crucial gaps remain, including definitions of the two crimes which are not compatible with the respective Conventions, a vague and limited provision for universal jurisdiction, and the absence of a provision prohibiting the admissibility of statements obtained by torture in proceedings. Additionally, the body designated to investigate complaints under the Draft Act, while nominally independent, needs to be trained and resourced to fulfil this role, and its independence must be guaranteed and safeguarded in practice.

**Amnesty International recommends that Thai authorities:**

- Repeal Section 44 of the Interim Constitution and amend the 2016 Constitution, in particular by repealing or amending Articles 25(1), 265 and 279 to fully reflect Thailand's Covenant obligations.
- Repeal Head of NCPO Order No. 3/2015 and other orders that arbitrarily restrict freedom of expression, association, peaceful assembly, and movement.
- Repeal the 1914 Martial Law Act and the 2005 Emergency Decree, or amend them 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,
- Withdraw the derogations from Article 12(1), 14(5), 19 and 21 of the Covenant.

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<sup>8</sup> Unofficial English translation of Draft Constitution, 7 July 2016, available at <http://www.prachatai.com/english/node/6324>

<sup>9</sup> Organic Act on Referendum on the Draft Constitution, 2016, available at <http://anfrel.org/wp-content/uploads/2016/06/Organic-Act-on-Referendum-for-the-Draft-Constitution-2016-part-1.pdf>.

### 3. RIGHT TO LIFE (ART. 6)

Authorities have not initiated prosecutions of members of security forces who used excessive and unnecessary lethal force, including with live ammunition, in the context of suppressing demonstrations in May 2010.<sup>10</sup>

Lethal attacks on human rights defenders have continued during the period of the review. Death threats have also continued against individuals from communities where activists had already lost their lives.<sup>11</sup> Authorities have failed to successfully prosecute perpetrators or conduct full, impartial, independent and efficient investigations.<sup>12</sup>

While Thailand has not carried out any executions since 2009, it continues to hand down death sentences. During the period under review, authorities also passed legislation that expanded the scope of non-lethal crimes for which the death penalty is applicable, including corruption, fraud and the buying and selling of political positions.<sup>13</sup>

In July 2012, Thailand withdrew its interpretive declaration to Article 6(5) of the Covenant regarding the abolition of the death penalty for persons below the age of 18 at the time of the crime.

Thailand has continued to abstain from voting on UN General Assembly resolutions on a moratorium on the use of the death penalty, most recently in December 2014<sup>14</sup> and December 2016.<sup>15</sup>

#### **Amnesty International recommends that the Thai authorities:**

- Take appropriate measures to protect the right to life, including by responding to death threats against human rights defenders and community activists.
- Investigate violations of the right to life and prosecute those suspected of committing crimes under domestic law in trials that meet international standards for fairness, and without recourse to the death penalty.
- Provide full reparation to victims, including restitution, rehabilitation, measures of satisfaction – such as public apologies, public memorials, verification of the facts and full and public disclosure of the truth about killings – and guarantees of non-repetition.
- Require business enterprises to put in place due diligence processes to ensure they do not cause or contribute to abuses of the right to life throughout their global operations.
- Enact legislation abolishing the death penalty for all crimes.
- Pending the abolition of the death penalty, commute all death sentences and immediately establish an official moratorium on executions.
- Ratify the Second Optional Protocol to the Covenant.

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<sup>10</sup> Amnesty International, *Report 2013: State of the World's Human Rights in 2013*, POL 10/001/2013, 23 May 2013, available at <https://www.amnesty.org/en/documents/pol10/001/2013/en/>.

Amnesty International, *Report 2011: State of the World's Human Rights*, POL 10/001/2013, 13 May 2011, available at [http://files.amnesty.org/air11/air\\_2011\\_full\\_en.pdf](http://files.amnesty.org/air11/air_2011_full_en.pdf).

<sup>11</sup> Amnesty International, *End Impunity and Ensure Justice for Community under Attack*, ASA 39/3421/2016, 11 February 2016 <https://www.amnesty.org/en/documents/asa39/3421/2016/en/>.

Amnesty International, *Thailand, Authorities must Protect Activists in the Line of Fire*, ASA 39/3805/2016, 9 April 2016 <https://www.amnesty.org/en/documents/asa39/3805/2016/en/>.

<sup>12</sup> Amnesty International, *Thailand: 'High Time for Justice'*, ASA 39/2662/2015, 14 October 2015, available at <https://www.amnesty.org/en/documents/asa39/2662/2015/en/>.

<sup>13</sup> National News Bureau of Thailand, "CDC insists on death sentence as maximum punishment in new political party law", 20 December 2016, available at [http://thainews.prd.go.th/website\\_en/news/news\\_detail/WNPOL5912210010002](http://thainews.prd.go.th/website_en/news/news_detail/WNPOL5912210010002).

<sup>14</sup> Resolution adopted by the General Assembly on 18 December 2014, UN Doc. A/RES/69/186.

<sup>15</sup> Resolution adopted by the General Assembly on 19 December 2016, UN Doc. A/71/PV.65.

## 4. PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT (ART. 7)

Amnesty International has documented the extensive use of torture and other ill-treatment in Thailand during the reporting period, including in the context of counterinsurgency operations in southern Thailand, proceedings in security-related cases occurring after the coup, and law enforcement activities throughout the country.<sup>16</sup> Amnesty International has concluded that the use of torture and other ill-treatment by military officers in Thailand is systematic.<sup>17</sup> Amnesty International has also documented torture and other ill-treatment of suspected drug users, migrant workers, members of ethnic minorities, indigenous peoples and others as part of routine law enforcement operations by police – as well as by soldiers carrying out law enforcement operations.

Courts, police and military authorities failed to adequately investigate complaints and reports of torture, including in cases where detainees bore visible injuries during courtroom appearances. Medical examinations of individuals who were allegedly tortured fell well short of standards defined in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

Widespread impunity for torture in Thailand has been facilitated by legal obstacles such as the lack of criminalization of torture and legal provisions providing immunity from prosecution, such as those contained in the 1914 Martial Law Act and the 2005 Emergency Decree. Those reporting torture or seeking redress for acts of torture have also faced intimidation and criminal proceedings.

Thailand also lacks independent investigative mechanisms, effective witness protection programs, and adequate oversight of detention facilities. Suspected perpetrators of torture rarely face criminal prosecution, although at times they are subject to internal disciplinary measures.

Thai law fails to unequivocally prohibit the use of statements obtained through torture or other ill-treatment in all proceedings. While key legal safeguards against torture exist under Thai law, including the duty to bring detainees before a court within 48 hours of arrest and the right of detainees to have legal counsel present during questioning, these protections are overridden by a number of laws and official decrees allowing for periods of unaccountable detention.

As described above, the Martial Law Act of 1914 and Head of NCPO Orders No. 3/2015 give military officers the right to detain individuals in unofficial places of detention – “premises other than police stations, detention facilities, or prisons”, according to the two orders – without judicial or any other oversight for periods of up to seven days, during which detainees are often held incommunicado. The Emergency Decree allows for a further 30 days of military detention with court approval. Head of NCPO Order No. 13/2016, issued in March 2016, expanded the military’s powers of detention to cover a broad range of criminal activities. Torture by the army documented by Amnesty International has primarily occurred during the periods of unaccountable detention that are facilitated by these laws.

### Amnesty International recommends that the Thai authorities:

- Repeal or amend the 1914 Martial Law Act, the Emergency Decree of 2005 and Orders No. 3/2015 and 13/2016 to ensure compliance with international human rights law and standards, including by repealing provisions for the seven-day period of unaccountable detention, ensuring that individuals are only detained in official places of detention with prompt access to lawyers, family members and independent courts, and ensuring that all questioning takes place in the presence of an independent lawyer.
- Ensure that the draft Prevention and Suppression of Torture and Enforced Disappearance Act fully complies with the requirements of the UN Convention against Torture and the Convention against Enforced Disappearance, and then pass it into law without delay.

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<sup>16</sup> Amnesty International, “*Make Him Speak before Tomorrow*”: *Torture and Ill-treatment in Thailand*, ASA 39/4746/2016, 28 September 2016, available at <https://www.amnesty.org/en/documents/asa39/4746/2016/en>; Amnesty International, *Thailand: Submission to the United Nations Committee against Torture*, ASA 39/003/2014, 11 April 2014, available at <https://www.amnesty.org/en/documents/ASA39/003/2014/en/>; Amnesty International, *Thailand: Torture in the southern counter-insurgency*, ASA 39/001/2009, January 2009, available at <https://www.amnesty.org/en/documents/ASA39/001/2009/en/>.

<sup>17</sup> *Ibid.*

- Ensure in law and practice that “confessions” and other statements obtained through torture or other ill-treatment are never admitted as evidence in courts, except against a person accused of torture or other ill-treatment as evidence that the statement was made, including by amending section 226(1) of the Criminal Procedure Code.
- Ratify and implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by establishing an independent, efficient and well-resourced National Preventive Mechanism with powers to conduct unimpeded and unannounced visits to all places of detention and all persons deprived of their liberty, and grant access to places of detention to national and international human rights groups.
- Institute a systematic and comprehensive range of effective and accessible measures, in consultation with victims of torture and their representatives, to grant all victims of torture and other ill-treatment reparations in accordance with international standards, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.
- Ensure that whenever torture and other ill-treatment is alleged or suspected, the authorities have the obligation to carry out a prompt, thorough and impartial investigation, including a forensic medical examination in conformity with the Istanbul Protocol, or autopsies in conformity with the Minnesota Protocol in case of a death in custody.
- Ensure that legal proceedings are postponed pending the outcomes of investigations into alleged torture and other ill-treatment, that the scope, methods and findings of such investigations are made public, and that officials suspected of committing torture and other ill-treatment are suspended from active duty during the investigation.

## 5. LIBERTY AND SECURITY OF THE PERSON, PROTECTION AGAINST ARBITRARY DETENTION AND ENFORCED DISAPPEARANCE (ARTS. 7 AND 9)

In January 2012, Thailand signed the International Convention for the Protection of All Persons from Enforced Disappearance indicating at that time that ratification was subject to approval by the Cabinet and Parliament. It further undertook at its 2016 UPR review to move to ratify the Convention.

Enforced disappearances continue to be reported and there has been no significant progress in investigations or prosecutions. For example, no one has been held accountable for the enforced disappearance of Somchai Neelapaijit, who was abducted in Bangkok in 2004.<sup>18</sup>

Authorities have not acted on the recommendations of UN Working Group on Arbitrary Detention to drop charges, expunge convictions and release individuals found to be arbitrarily detained, including prisoner of conscience Somyot Prueksakasemsuk.<sup>19</sup>

After the 2014 coup, authorities used Martial Law and Head of NCPO Order Nos. 7/2014 and 3/2015 to arbitrarily detain hundreds of individuals, often incommunicado for periods up to, and occasionally exceeding, a week. Under Order Nos. 39/2014 and 40/2014, these individuals were often released on condition that they do not travel abroad without permission from the NCPO and do not “participate in any political activity or meeting anywhere.” The documents they signed also stipulated that they would be prosecuted and have their bank accounts frozen should they breach the terms of their release. Authorities have threatened to enforce these restrictions in order to intimidate individuals not to engage in public activities. In 2016, politician Wattana Muangsook was charged with violating the conditions of his release,<sup>20</sup> and journalist Pravit Rojanaphruk was denied permission to travel abroad to attend a UNESCO World Media Freedom event.<sup>21</sup>

<sup>18</sup> Amnesty International, “Thailand: Sad Day for Justice as Police Officers Acquitted and Family Denied Right of Co-Plaintiff in the Enforced Disappearance of Leading Human Rights Defender”, ASA 39/3132/2015, 29 December 2015, available at <https://www.amnesty.org/en/documents/ASA39/3132/2015/en/>.

<sup>19</sup> *Somyot Prueksakasemsuk v. Thailand*, Working Group on Arbitrary Detention, Opinion No. 35/2012, U.N. Doc. A/HRC/WGAD/2012/35 (2012).

<sup>20</sup> Amnesty International, “Thailand: Prisoner of Conscience Must Be Released: Wattana Muangsook”, ASA 33/3866/2016, 19 April 2016, available at <https://www.amnesty.org/en/documents/asa33/3866/2016/en>.

<sup>21</sup> Amnesty International, “Martial Law Prevails One Year after Officially Lifted,” ASA 39/3760/2016, 1 April 2016, <https://www.amnesty.org/en/documents/asa39/3760/2016/en/>.



**Amnesty International recommends that the Thai authorities:**

- Conduct full, impartial, independent and efficient investigations into all allegations of enforced disappearance, and, where sufficient admissible evidence exists, prosecute those responsible in fair trials without recourse to the death penalty.
- Provide full reparations to survivors and families of persons subjected to enforced disappearance.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and accept the competence of the UN Committee on Enforced Disappearance to receive individual and inter-state complaints.

## **6. RIGHT TO A FAIR TRIAL (ART. 14)**

After the military coup in 2014, the government issued a series of orders providing for the trial of civilians in military courts for the following crimes:<sup>22</sup>

- Insulting the monarchy, under Articles 107-112 of the Penal Code;
- Sedition and other crimes relating to national security, under Articles 113-118 of the Penal Code;
- Possession of firearms, explosives, and ammunition in violation of the Firearms, Ammunition, Explosives, Fireworks and Imitation Weapons Act of 1947; and
- Violations of other orders and announcements made by the NCPO.

In November 2016, the NCPO issued an order rescinding the jurisdiction of military courts over civilians. However, the order did not apply retroactively, meaning that on-going trials, and those concerning events that took place before the order was issued, continue in military courts.<sup>23</sup>

Article 112 of the Penal Code – otherwise known as Thailand’s *lèse majesté* law – provides for up to 15 years imprisonment for anyone who “defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent.” Beyond violating Article 19 of the Covenant (see below), the fair trial rights of *lèse majesté* suspects have been adversely affected by discriminatory treatment in the judicial process on the basis of authorities’ characterisation of *lèse majesté* offences as security crimes. These individuals have frequently been denied bail, and their pre-trial hearings and trials have often been held *in camera*. Military courts have also handed down extremely long sentences under Article 112 for the peaceful exercise of the right to freedom of expression.<sup>24</sup> At times, defendants have been convicted of multiple counts of Article 112 violations and sentenced to serve prison terms consecutively, leading to penalties of decades of imprisonment.

**Amnesty International recommends that the Thai authorities:**

- Transfer all cases of civilians pending before the military courts to civilian courts.
- Immediately and unconditionally release any individual detained on the basis of their peaceful exercise of human rights, and halt any ongoing criminal proceedings against such individuals.
- Review relevant cases that have already been concluded and ensure the immediate and unconditional release of individuals who have been convicted solely for the peaceful exercise of their human rights.

## **7. TREATMENT OF FOREIGNERS, PARTICULARLY REFUGEES AND ASYLUM-SEEKERS (ARTS. 12, 13 AND 10)**

In 2017 authorities indicated that they were proceeding with plans to design and implement a mechanism for screening undocumented migrants and refugees, following pledges by the Prime Minister to the United Nations Leaders Summit on Refugees in September 2016.<sup>25</sup>

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<sup>22</sup> Head of NCPO Order Nos. 37/2014, 38/2014, and 50/2014.

<sup>23</sup> Head of NCPO Order No. 55/2016, 12 September 2016.

<sup>24</sup> Amnesty International, “Thailand: Preposterous 25 year prison sentence for criticizing royal family,” 21 March 2015, available at <https://www.amnesty.org/en/latest/news/2015/03/thailand-preposterous-25-year-prison-sentence-for-criticizing-royal-family/>.

<sup>25</sup> Ministry of Foreign Affairs, “Press Release: Thailand pledged additional assistance to alleviate the plights of displaced persons,” 21 September 2016, available at <http://www.mfa.go.th/main/en/media-center/14/70440-Thailand-pledged-additional-assistance-to-alleviat.html>.

Thailand's Immigration Act does not confer official legal status on refugees and asylum seekers. Consequently, these individuals, including children, have been at constant risk of arrest, detention and deportation. Refugees and asylum seekers have been held indefinitely in immigration detention centres, in conditions which may fall below those required under Article 10 of the Covenant as they are neither intended nor equipped for long-term accommodation. 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.<sup>26</sup>

**Amnesty International recommends that the Thai authorities:**

- Adopt a law concerning refugees and asylum-seekers that is in line with international law and standards.
- Ensure that refugees and asylum-seekers are granted legal status in Thailand and have access to education, health care and work opportunities.
- Grant refugees, asylum-seekers and migrants access to independent, professional and free legal advice and representation, in order to ensure that persons in need of international protection are duly recognized and violations of the principle of *non-refoulement* are prevented.

## **8. FREEDOM OF EXPRESSION, ASSOCIATION, AND PEACEFUL ASSEMBLY (ARTS. 19, 21 AND 22)**

Over the reporting period, the erosion of the freedom of expression, association and peaceful assembly observed at the last review has accelerated.

Authorities have initiated criminal proceedings against human rights defenders, political activists, politicians and a wide range of individuals for their peaceful exercise of the rights to freedom of expression, assembly and association. Proceedings against these individuals have often been based on vaguely worded and restrictive provisions in the Penal Code, including Article 112, concerning lèse majesté offenses, Article 116, concerning sedition, and Articles 326 and 328, concerning defamation.

Additionally, individuals have been investigated and prosecuted under the highly restrictive Computer Crimes Act (2007). New laws and orders promulgated by the NCPO, including the Public Assembly Act and Head of NCPO Order No. 3/2558 have also been used to target human rights defenders, political activists and others. Courts have at times handed down lengthy prison sentences to individuals accused in such cases.

These laws place sweeping and arbitrary restrictions on the human rights to freedom of expression and peaceful assembly and must be repealed or amended substantially to comply with Thailand's obligations under the Covenant.

Head of NCPO Order Nos. 97/2014 and 103/2014 empower authorities to censor news reporting and other communications considered to have the potential to "create confusion, instigate unrest or deepen divisions among people" or deemed to be "malicious" or "misleading" about the NCPO. Order No. 41/2016 allows for media outlets to be shut down if they violate NCPO Orders. The NCPO has used these powers to censor news content and shut down broadcasters, including Peace TV, an outlet affiliated with the political opposition. The lack of precision in the language and application of these laws and orders has encouraged self-censorship.

Authorities, including the Prime Minister, have regularly made public comments threatening the media and calling on them to actively censor "negative" commentary. Military officers have also surveilled and harassed individuals exercising their right to freedom of expression, including academics and members of the media.

Since the 2014 coup, the NCPO has banned political gatherings of five or more persons through the Martial Law Act, and subsequently NCPO Order Nos. 7/2014 and 3/2015. Under Order No. 3/2015, which is still in effect, violations may be punished by up to six months imprisonment. The NCPO has also enacted the Public

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<sup>26</sup> Amnesty International, *China: Deported Activists at Risk of Torture*, ASA 17/2880/2015, 19 November 2015, available at <https://www.amnesty.org/en/documents/asa17/2880/2015/en/>; Amnesty International, Request for Information on Activists Transferred from Thailand to China, 19 January 2016, available at [http://www.amnesty.eu/content/assets/Docs\\_2016/Letters/B1731\\_Chinese\\_activists\\_transfer\\_from\\_Thailand\\_19012016.pdf](http://www.amnesty.eu/content/assets/Docs_2016/Letters/B1731_Chinese_activists_transfer_from_Thailand_19012016.pdf); Amnesty International, *Behind the Rhetoric: Human Rights Abuses in Bahrain Continue Unabated*, MDE 11/1396/2015, 16 April 2015, available at <https://www.amnesty.org/en/documents/mde11/1396/2015/en/>, p. 50; Amnesty International, *Bahrain: Trial of 57 opened amidst allegations of abuse during prison riot*, MDE 11/2163/2015, 27 July 2015, <https://www.amnesty.org/en/documents/mde11/2163/2015/en/>.

Assembly Act of 2015<sup>27</sup> which requires organizers of peaceful public assemblies to give authorities prior notification, and provides criminal and administrative penalties for infringement.<sup>28</sup>

Authorities have promptly and forcibly dispersed peaceful gatherings, at times with unnecessary or excessive force. They have also detained individuals carrying out symbolic activities by themselves.

The ban on political gatherings has compromised academic, NGO and community groups' freedom of association, regardless of whether meetings are being held in public or private spaces. Individuals have been forced to negotiate with local police to be able to hold meetings, and have faced dispersal and cancellation, and a reduction of the scope of what they may say in public.

**Amnesty International recommends that the Thai authorities:**

- Immediately order all officials to refrain from initiating criminal proceedings against individuals for the peaceful exercise of their human rights, including the rights to freedom of expression, association and assembly.
- Halt any on-going criminal proceedings against individuals for the peaceful exercise of their human rights.
- Review relevant cases that have already been concluded and ensure the immediate and unconditional release of individuals who have been convicted solely for the peaceful exercise of their human rights.
- Amend or repeal laws and orders that restrict or provide criminal penalties for the peaceful exercise of human rights or allow for arbitrary detention, in order to ensure that they meet Thailand's international human rights obligations, including Articles 112, 116, 326 and 328 of the Penal Code, the Computer Crimes Act, and NCPO Order No. 3/2015.
- Ensure that new laws, including those governing future elections or referendums, do not arbitrarily restrict the human rights to freedom of expression, association and peaceful assembly.
- Conduct prompt, impartial and effective investigations into excessive or unnecessary use of force against protesters by security forces and hold those responsible accountable.

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<sup>27</sup> The Public Assembly Act (2015) came into force on 13 August 2015, unofficial translation available at [http://lawdrafter.blogspot.co.uk/2015/08/translation-thai-public-assembly-act-of.html?\\_sm\\_au\\_=iVVV3ZjSjM1Qp7Qn](http://lawdrafter.blogspot.co.uk/2015/08/translation-thai-public-assembly-act-of.html?_sm_au_=iVVV3ZjSjM1Qp7Qn)

<sup>28</sup> Amnesty International, "Draft Public Assembly Act still Fails to Meet Thailand's international Human Rights Obligations," ASA 39/1174/2015, 11 March 2015, available at <https://www.amnesty.org/en/documents/asa39/1174/2015/en/>.



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# THAILAND

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

119<sup>TH</sup> SESSION, 6-29 MARCH 2017

Amnesty International submits this information to the Human Rights Committee (the Committee) in advance of the examination of the second periodic report of Thailand (hereafter Thailand), at the 119th session of the Committee scheduled to be held in March 2017.

The submission features information in relation to the Committee's List of Issues on Thailand and draws on Amnesty International's recent research on the country.