

International Federation for Human Rights (FIDH) and Union for Civil Liberty (UCL)
Joint UPR Submission – Thailand – 12th Session - October 2011

Summary

1. The International Federation for Human Rights (FIDH) and the Union for Civil Liberty (UCL) joint submission focuses on the continued use of the death penalty, especially for drug related crimes and the inhumane practice of permanent shackling of prisoners, the ineffectiveness of the National Human Rights Commission, the threat to human rights posed by extraordinary powers granted by the Internal Security Act, and increasing and widespread restriction of freedom of expression through active government censorship and persecution of peaceful critics.

I. The death penalty

2. Capital punishment is still enforced in the Thai legal system. At present, 708 prisoners are condemned to death and over 50 new death sentences are pronounced each year (53 sentences in 2010)¹. Respect for human life is the most fundamental human right. Whereas the intention to abolish the death penalty is included in the 2009-2013 national human rights action plan of the Royal Thai Government, we are now in its third year of implementation and no step has been taken to fulfill the promise, least of all by any attempt to create or encourage an informed public opinion on the question.
3. An execution of two prisoners in 2009 was carried out with callous haste and for reasons unknown, breaking a de facto moratorium which had held for the previous six years. The action has greatly increased the anxiety of other condemned prisoners and their families.
4. Despite the declared intention in the national human rights action plan alluded to, the Ministry of Justice has attempted to bypass the wait for the results of requests for royal pardon by proceeding with executions if such a request remains unanswered for 60 days since final sentencing, a measure rejected by the Department of Corrections².
5. In 2005, the United Nations Human Rights Committee³ expressed its concerns that the death penalty is not restricted to the ‘most serious crimes’. However, no action has been taken to reduce the categories of crimes punishable by death, such as drug-related offences. On the contrary, the Minister of Interior has initiated a campaign to decrease the quantity of narcotic substance liable to Capital Punishment to 10 grams, a measure that could double the number of death sentences on drug-related charges⁴.
6. The Human Rights Committee in 2005 also drew attention to the overcrowding of places of detention in Thailand and the deplorable permanent shackling of prisoners condemned to death⁵. No remedial action has been taken. In a key test case, one condemned prisoner appealed against his shackling, precisely by quoting UN human rights instruments. The court responded by ordering the removal of shackles of this prisoner, creating a precedent for others. However, the Department of Corrections has submitted an appeal on grounds already covered in the judgment. The prisoner remains shackled.

¹ Figures courtesy of Department of Corrections, 2011.

² Procedure of applying for remission of death sentence, Department of Corrections, 2010.

³ CCPR/CO/84/THA, para.14.

⁴ Press conference at the Ministry of Interior of Thailand, 13th January 2010.

⁵ CCPR/CO/84/THA, para. 16.

Recommendations to the Government:

- 1) Immediately take steps towards the abolition of the death penalty as promised in the national human rights action plan. If, however, any delay is envisaged, drug-related and non-violent offenses should be removed from the categories subject to capital punishment.
- 2) Implement the 2005 recommendation by the Human Rights Committee and immediately cease the permanent shackling of prisoners⁶.

II. The Present National Human Rights Commission of Thailand

7. The appointment of the first National Human Rights Commission (NHRC) was widely welcomed. Its eleven members were experienced and dedicated persons, selected by a body which represented a wide spectrum of interests of civil society in conformity with Article 4 of the Paris Principles. Most of the commissioners, including the distinguished chairman, Professor Saneh Jamarik, had a strong human rights background, enabling them to engage actively in investigation of human rights abuses. Reports of Commission's activities are a record of the commitment and achievements of the Commissioners. The Commission regretted only that their numbers were insufficient to meet the numerous calls for assistance.
8. The second NHRC (2009-2015) is very different. Appointed exclusively by representatives of the judiciary, with approval of the Senate, the composition of the Commission indicates its non-pluralist composition: an academic, five retired government officials, and one businessman. One of the new Commissioners had even been investigated by the previous Commission, and found accountable for human rights abuses in a factory which he owned. None had direct experience of action for human rights or in representing the viewpoint of civil society. Clearly, the government intention was to replace a commission which was considered to be proactive and independent with a complacent pro-government team. Such, at any rate, was the result.
9. The changed status of the Commission is mirrored in its change of location. The first Commission was accessibly located in central Bangkok. Meeting rooms and an auditorium were available for human rights activities by NGOs. The second NHRC is located on the outskirts of Bangkok, embedded in a huge government complex, difficult to access and where its identity as an independent body is hidden. The Commission no longer appears to engage in major human rights issues. While still receiving human rights appeals at the rate of one to two hundred a month, its response is lethargic and inadequate. The power of the Commission to take court action was extended on its appointment but it hardly uses these powers. During April-May 2010, army action against street protests in Bangkok led to the deaths of 91 persons. The government promised independent and transparent investigation but the government-appointed investigative committee lacked the power to subpoena military witnesses. While the NHRC has such power and began its own investigation, it declined to use the power and its investigation is largely stalled.
10. Government offices which receive complaints from the Commission mostly deny the charges or ignore them. Those submitting issues to the Commission complain of long delays to investigate and ineffective action. A year has passed before the Commission responded to a complaint made by relatives of 71 persons, who died from suffocation and/or from injuries sustained during arrest as a result of military negligence in transporting them, following their arrests after the Tak Bai incident in Narathiwat Province, Southern Thailand.
11. It is particularly worrying that a United Nations Partnership Framework (UNPAF) Action Plan Matrix, which outlines action to support Thailand in implementing recommendations of international human rights mechanisms, in particular those concerning vulnerable people, proposes a pivotal reliance on the NHRC. The Action Plan for 2012 to 2016 consists mainly of a

⁶ Id.

programme of training, consultation and other advocacy related activities. There is little evidence that the present Commission has the ability, the will, or the resources to respond to the expectations of the Action Plan.

12. In summary, the appointment of the present Commission was clearly aimed at making it more amenable to government policies and to lessen unwanted criticism of its human rights shortcomings.

Recommendations to the Government:

- 1) Restore the Commission to its former strength and pluralist representation by appointing a further four commissioners chosen by selectors representing civil society.
- 2) Relocate the Commission to an accessible location which clearly represents its independent status.
- 3) Instruct all government offices as well as state security forces to comply and cooperate in good faith with the Commission in its investigation and fact-finding activities.
- 4) Ensure future nominations and selection of commissioners are conducted in a transparent, participatory and consultative manner to fully ensure the commission's independence, impartiality, competence, pluralist representation and gender balance, in compliance with the Paris Principles.

III. Internal Security Act (ISA) and military dominance over civilian rule

13. The Internal Security Act (ISA) of 2008 indicates the failure of civilian rule in Thailand over many years in a long history of military coups and interventions. The Act was passed by a Constitutive Assembly appointed by a military Junta, which came to power by overthrowing an elected government in its second term in September 2006. The Act effectively legitimises military influence in the guise of a military-dominated directive body, the Internal Security Operations Command (ISOC), nominally under the directorship of the Prime Minister. A first stage of ISA, which operates continually, is one of information gathering and surveillance of the population, while a second stage, triggered by a Cabinet declaration, authorises control over declared areas with emergency powers which are unconstitutional, with little legal safeguards, and oblivious of fundamental human rights.
15. Thailand first turned to emergency legislation to empower the military in suppressing insurrection in the Southern border provinces. Ten years later, and with over 4,000 civilian casualties, it is clear that emergency rule has failed. When civil protest broke out in Bangkok and other cities, a countrywide State of Emergency was declared. But States of Emergency are by definition temporary and require notification to the UN. The ISA may appear to be a milder measure but is similar in essence to a State of Emergency. Many provisions of the state of emergency decree have been incorporated into the ISA, making them permanent and accessible at all times without the stigma of a State of Emergency. Given the history of military dominance in Thailand, the provision in the Act that enables the Prime Minister to delegate his powers as Director of ISOC to the Commander-in-Chief of the Army is in effect a built-in mechanism for surrendering civilian control to the military.
16. Under the ISA, arrests and prosecutions must follow legal procedures. However, the ISA's definition of a 'threat' to internal security is dangerously overly broad and vague, thereby granting unbridled discretion to the government and the military to determine what is and is not a 'threat' and what activities to monitor and suppress, as well as to invoke the Act's exceptional powers without justifications based on clear and precise criteria. It gives officials of ISOC a wide range of coercive police powers normally exercised by civilian authorities, including powers to use both lethal and non-lethal force, to arrest and detain individuals, conduct searches, enter onto

premises overtly and covertly, and to lay criminal charges. Particularly disquieting is the power under the Act, to request individuals suspected of having committed a range of regulatory or criminal offenses to ‘voluntarily’ commit themselves to “training camps” for up to six months (See Section 21 of the Act). Such requests are made without the presumption of innocence or the safeguards of the legal system and voluntary consent of the persons concerned in effect is difficult under pressured circumstances.

17. The expansive powers given to the authorities by the Act are subject to no independent oversight mechanisms. The only time the Prime Minister is required to report to the parliament under the Act is when the ‘threat to internal security’ has subsided or can be addressed within the normal powers of the government agencies (Section 15, para. 2). The lack of clear and precise definitions and criteria for invoking extraordinary powers is compounded by this glaring absence of democratic checks and balances and the inability of parliamentarians to review and challenge the purpose and legality of any decisions made or actions taken by the executive branch.
18. While Thailand’s ISA is less draconian than those of Singapore and Malaysia, a reflection on the long term use of those acts would indicate a likely future extension and increasing severity over time of the Thai Act, in order to attain the enviable supposed stability of those two countries.. Already, in 2011, we see appeals from the police and cabinet declarations authorising Stage 2 in seven areas in Bangkok, first from February 9th to February 23rd, subsequently, from February 23rd to March 25th, following minor, peaceful civil protest action in Bangkok which could easily have been controlled by existing laws.

Recommendations to the Government:

1. Abolish the ISA in its entirety and seriously take the path of civil democracy, preserving the freedoms guaranteed in the Constitution and adhering responsibly to the international human rights treaties it has ratified.
2. That measures be taken to clearly and precisely define and limit the role of the military in civil administration. This may be supported by a constitutional ruling on the neutrality of the military in all matters of civil dispute.
3. Impress upon all soldiers in their training and manuals of operation that it is absolutely prohibited to shoot unarmed civilians under any circumstances, and that any order of an officer to do so is illegitimate, irrespective of whether any emergency or security laws are in force.

IV. Freedom of Expression: Prachatai website and its webmaster, Ms. Chiranuch Premchaiporn

19. “Democracy is freedom of expression” is a message not appreciated in South East Asia, least of all Thailand which is assiduous in blocking access to web sites that carry a different message than the strictly controlled state media. Section 45 of the 2007 Thai Constitution guarantees to the people the right to freedom of expression in all forms and the right to access information. The Computer Crime Act (CCA) of 2007 contravenes this freedom by introducing arbitrary, broadly-defined and vague criteria on which online expressions are to be judged and restricted if they are deemed to ‘have an impact on the Kingdom’s security...or that might be contradictory to the peace and concord of good morals of the people’⁷. The Act grants ‘Competent Officials’ expansive, intrusive and unchecked powers of break-in to offices and homes, seizure of computer equipment and records under suspicion of computer crime, and blocking of websites”. On the other hand, judicial oversight is limited to merely approve or reject requests from government agencies to block websites and to exercise their powers under the CCA.

⁷ Section 20, Computer Crime Act of 2007.

20. Actions against websites, arrests and prosecutions have passed all reasonable count. Research conducted by the iLaw Project has found that between July 2007 and July 2010, there were at least 117 court orders invoking the Computer Crime Act to block 74,686 Uniform Resource Locators (URLs)⁸. Due to the lack of transparency in the blocking of websites, the real and exact number of sites blocked cannot be ascertained but is believed to be far greater. 77% of sites were blocked on charges of lèse-majesté content and 22% for pornographic content; most were blocked on the same day that complaints were lodged; on average, 690 sites were blocked daily, according to the research⁹.
21. In an emblematic case, government agents have perversely persecuted an independent website Prachatai (Free People), a highly popular forum of news and debate, which also publishes interviews and articles by academics, human rights and community activists, trade unionists, and the general public. Ms. Chiranuch Premchaiporn is Executive Director and founder of Prachatai, an advocate for freedom of expression and the web forum's sole full-time operator. Her office has been raided by police, closed down, had its computer equipment seized and been forced to change its website address continually to remain on line. Ms. Chiranuch herself has been arrested twice and currently faces multiple charges under the CCA, which in total could result in up to 50 years of imprisonment. The offending topics were posted not by Ms. Chiranuch but by users of the website at different times. They had been removed before the time of arrest but not quickly enough. No complaint or request for removal had been made by police.
22. The subject matter of the charges is said to be offensive to the monarchy, although the actual content of the disputed postings is not revealed. The prosecution has attempted to portray an overall series of anti-monarchical sentiment. However, the defence lawyers presented the items individually to government censors and requested specific evidence of criminal content. The only answers were vague responses that the censors 'felt', or 'believed' that the items were injurious. It becomes evident that there are no clear, precise and objective criteria for determining the offence of lèse-majesté, no manual of principles, and no training for the multitude of censors. Individual decisions appear to be spontaneous and arbitrary. Imposing criminal liability on Internet intermediaries like Ms. Chiranuch will have a chilling effect on freedom of expression.

Recommendations to the Government:

- 1) All charges against Ms. Chiranuch Premchaiporn should be dropped.
- 2) Amend both the Criminal Code and the Computer Crime Act to eliminate vague and ill-defined references to 'national security' and to provide clear, precise and reasonable criteria in determining the offense of lèse-majesté.
- 3) Publicise the number of websites blocked and the reasons thereof.
- 4) Effective judicial and parliamentary oversight mechanisms should be in place and actively exercised to prevent and mitigate abuses of the lèse-majesté law and the Computer Crime Act.
- 5) Invite the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to conduct a country visit to Thailand.

⁸ iLaw, 'Situational Report on Control and Censorship of Online Media, through the Use of Laws and the Imposition of Thai State Policies', December 2010. Available at: <http://www.boell-southeastasia.org/web/52-557.html>

⁹ Id.