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FIDH - Worldwide Human Rights Movement

SITUATION OF HUMAN RIGHTS DEFENDERS

Updated as of May 2011

In 2010-2011, impunity remained the rule for violations committed against human rights defenders, including enforced disappearances and assassinations. Besides, human rights defenders continued to be subjected to judicial harassment when taking part in peaceful assemblies and, in the case of a blogger and journalist, for documenting human rights violations.

Political context

The year 2010 proved to be politically turbulent for Thailand. Anti-Government protests led by the United Front for Democracy against Dictatorship (UDD), the so-called "Red Shirt" movement, started in March and continued until May 2010. The protests, which were initially peaceful, demanded the resignation of the sitting Government and early elections. On April 7, 2010, the protesters stormed the Parliament and forced MPs to flee. In response, the Government of Prime Minister Abhisit Vejjajiva declared a state of emergency on April 7 and set up the Centre for the Resolution of Emergency Situations (CRES), which was mandated to peacefully resolve political unrest¹. In addition, the Emergency Decree on Public Administration in Emergency Situation (2005) gave the authorities wide-ranging powers to arbitrarily interrogate, detain without charge, deny information about those detained, use unofficial detention sites, impose censorship and otherwise restrict the rights and liberties of Thai citizens. These measures also made securing justice difficult in the aftermath of the violence. The protracted demonstrations were brought to an end on May 19, 2010, when the army was deployed in order to crack down on the demonstrations. The state of emergency was gradually lifted in different parts of the country throughout the second half of 2010, and abolished completely on December 21, 2010. Yet, it was replaced by the Internal Security Act (ISA) on February 8, 2011, which effectively legitimises military influence in the guise of a military dominated directive body, the Internal Security Operations Command (ISOC). A first stage of the 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 and grants ISOC broad emergency powers that pose serious risks to fundamental human rights, while few legal safeguards exist to limit the use of such powers².

The UN High Commissioner for Human Rights urged the Government that an independent investigation of the events in April and May 2010 be conducted and all those found responsible for human rights violations be held to account³. In July 2010, the Government appointed a fact-finding commission, now known as the Truth for Reconciliation Commission of Thailand (TRCT), which has established that during the clashes between the protesters and Government forces and the subsequent crackdown, 92 persons were killed and over 1,885 injured⁴. Its mandate is generally limited to fact-finding and it is not entitled to initiate investigations or prosecutions. Although the Commission has among its members prominent human rights activists, the UDD is not represented at all. Lastly, there was little or no substantive cooperation from the authorities, in particular the military, to facilitate the work of the Commission, as the enforcement of the emergency measures remains shrouded in an almost complete lack of transparency⁵. Moreover, as of April 1, 2011, 35 red-shirts protesters had been convicted under various criminal charges, including "terrorism", "violence against the Government" and "coercing the Government", and 133 were still in detention⁶. The only evidence against many of those arrested is their appearance in photographs of protesters.

The situation in the three southern border provinces of Thailand also continued to deteriorate. In January 2011, the total number of deaths arising from the conflict reached 4,122. Military operations involved many human rights violations and in the seven years of insurrection only military courts have handed down reprimands to military personnel, ordered short term confinement to barracks, or inflicted fines of a few hundred baht (about two to six euros). It appears that the civilian Government has abdicated all responsibility in the area, allowing the military broad

discretionary power to continue a policy of repression that further exacerbates the situation. Meanwhile, violent attacks on Government officials, school teachers and Buddhist villagers by the insurgents continued. The Government has taken few substantive steps to initiate peaceful negotiations in light of on-going incidents of violence, and proposals to establish a special administrative zone or other possible options of autonomy for the South have met with resistance from the Thai authorities⁷.

Freedom of opinion and expression suffered a serious backlash in Thailand during the eight months the emergency regulations were in force. While the mainstream print media enjoyed a certain latitude of freedom, the broadcast and new media, including the Internet and satellite communications, were greatly targeted under the emergency measures, since the red shirt movement relied heavily on community radio stations. During the course of 2010, the CRES and other Government agencies shut down up to 43,000 websites or webpages, blogs, TV stations, community radio stations and online publications. Apart from resorting to emergency powers and the CRES, the Government also continued to apply the Computer Crimes Act of 2007 and the charge of *lèse majesté* to crack down on critical voices and silence the opposition⁸. This also had a chilling effect on the media and self-censorship became increasingly widespread.

Impunity for serious violations committed against human rights defenders

Even after seven years, no one has yet been held accountable for the disappearance on March 12, 2004 of human rights lawyer Mr. Somchai Neelaphaijit⁹. Since September 2010, the reading of the Appeal Court verdict at the Criminal Court in Ratchadaphisek Road in Bangkok was postponed on three occasions due to the absence of one of the five defendants, Police Major Ngern Thongsuk, who had been sentenced to three years in prison in a first trial in January 2006. On February 7, 2011, when the reading of the verdict was once again postponed, the Court issued an arrest warrant for Police Major Ngern Thongsuk to compel him to appear in court¹⁰. The verdict of the Appeal Court was read on March 11, 2011, on the eve of the seventh anniversary of Mr. Somchai's disappearance. The Criminal Court of Bangkok first ruled that Mr. Somchai's wife and children could not be considered as joint plaintiffs and could not act legally on behalf of the "injured person or dead person" under the provisions of the Criminal Procedure Code (CPC). Furthermore, the Appeal Court also ruled that for Police Major Sinchai Nimpunyakampong, Police Sergeant Major Chaiweng Paduang and Police Sergeant Rundorn Sithiket there was not enough evidence that could link them or involve them in the incident because the eyewitnesses could not identify the defendants. The Court also ruled that Police Lieutenant Colonel Chadchai Liamsanguan was not present at the place where the incident happened. The earlier conviction of Police Major Ngern Thongsuk was overturned: he had been identified by a witness as the one who dragged Mr. Somchai from his car, but the Court decided that the identification was doubtful. Additionally, the wife of Mr. Somchai, Ms. Angkhana Neelaphaijit, and the rest of his family have continued to experience acts of intimidation and harassment since the start of their quest to secure accountability in the case, including threatening phone messages.

Likewise, as of April 2011, there had been no progress in the investigation into the assassinations of Ms. Laila Paaitae Daoh, a prominent rights activist and peace advocate who was killed on March 12, 2009 in Krongpenang district, Yala province, and Mr. Praseth Rakpao, former member of the Provincial Council of Rayong and a lawyer, who was shot in his car on October 6, 2009. Mr. Praseth Rakpao was the leader of villagers protesting against a large investment treatment plant which runs counter to environmental protection laws. Moreover, an investigation was still in process into the assault, on November 27, 2009, against Mr. Sittichai Phetpong, Vice-President of the Association for the Protection of Maritime Resources who worked for the socially disadvantaged, as well as for the preservation of natural resources. In particular, the police have accused a hired gunman of the attack on Mr. Sittichai. In the past, Mr. Sittichai had received threats from those whose continued exploitations of natural resources have been curtailed by his initiatives against destructive environmental practices.

Ongoing criminalisation of human rights defenders taking part in peaceful assemblies

In 2010-2011, human rights defenders continued to be subjected to judicial harassment when taking part in peaceful assemblies. In particular, judicial proceedings resumed in 2010 against ten human rights defenders for their participation in a peaceful demonstration organised by a coalition of NGOs at the Parliament House in Bangkok on December 12, 2007, in order to protest against the attempts by the National Legislative Assembly (NLA), which was installed by the military after the 2006 coup, to pass a total of eight bills affecting civil liberties in Thailand in the final days before the general election of December 23, 2007. They were arrested on December 30, 2010, and subsequently released on bail. The ten defenders are Mr. Jon Ungphakorn, Chairperson of the NGO Coordinating Committee on Development (NGO-COD), Mr. Pairoj Polpetch, Secretary General of the Union for Civil Liberty (UCL), Mr. Sirichai Mai-ngarm, member of the Labour Union of Electricity Generating Authority of Thailand, Mr. Sawit Kaewwan, leader of the Confederation of State Enterprise Labour Union, Ms. Supinya Klang-narong, Secretary General of the Media Reform Campaign, Ms. Saree Ongsomwang, Chairperson of the Consumers' Association, Mr. Amnat Palamee, leader of the Confederation of State Enterprise Labour Union, Mr. Nutzer Yeehama, a member of the NGO Friend of People, Mr. Anirut Chaosanit, member of the Council of People's Organisations Network in Thailand, and Mr. Pichit Chaimongkol, member of the Campaign for Popular Democracy. They have all denied the charges brought against them. In addition to the initial charges¹¹, the Public Prosecutor added two additional ones under Section 116 and Section 215(3) of the Criminal Code, which carry heavier penalties¹². The Criminal Court originally set February 28, 2011 for the presentation of witnesses. Yet, as the assembly of evidence was incomplete, the trial is now scheduled to take place at 48 hearings over 24 days between February 21 and April 10, 2012. Similarly, Mr. Sunthorn Boonyod, Ms. Boonrod Saiwong and Ms. Jitra Kotchadej, three leaders of Triumph International Labour (Thailand) Union, remained prosecuted following their participation in a protest rally held on August 27, 2009¹³. In January 2010, they had been charged with "assembling more than ten persons to cause political disturbance", under Articles 215 and 216 of the Criminal Code, as well as under Article 108 of the Highway Act. They were released soon after their arrest on bail of 100,000 baht each (about 2,257 euros). The first hearing in the case took place on March 28, 2011 with the review of the evidence. The next hearings are scheduled to take place from November 15 to 22, 2011 and will examine prosecution and defendant witnesses.

Judicial harassment of a blogger and journalist who documents human rights violations

In 2010, a blogger and journalist who documents human rights violations faced judicial harassment. On September 24, 2010, Ms. Chiranuch Premchaiporn, Executive Director and webmaster of the online newspaper and web discussion forum Prachatai, was arrested at Bangkok airport while returning from an international conference on Internet freedom in Budapest, Hungary, and charged with violating the Computer Crimes Act and Article 112 of the Criminal Code, which defines Thailand's *lèse majesté* offences. Ms. Premchaiporn is an advocate for freedoms of expression and the media, and is actively involved in the "Citizen Net" network, which monitors the state of censorship in Thailand. She stands accused of 10 counts of violating the Computer Crimes Act of 2007 for not removing quickly enough from the Prachatai web-forum comments posted by third-party users, which were later deemed defamatory to the Thai royal family. Although she was released on bail the following day after paying a 200,000 baht bail (about 4,514 euros), she had to report to the police on a monthly basis until March 25, 2011, when the request by the Prosecutor to have her bail conditions extended was rejected. Her trial on *lèse majesté* charges started in February 2011 with the presentation of the prosecution's witnesses¹⁴. Strangely, the Presiding Judge found that she had another urgent trial to attend to in the days already allotted to the Chiranuch trial, and resumption of the trial was postponed to September 2011¹⁵.

¹ CRES was an ad hoc, unelected body, vested with broad powers under the emergency regulations. Among its members were the Deputy Prime Minister and several cabinet ministers, as well as the chief of the army and the police. CRES enjoyed broad immunity from prosecutions and was able to order arrest, detention, property seizure and asset freeze, as well as the closing of websites. It was dissolved after the state of emergency was lifted, in February 2011.

² The ISA was extended three times and was not lifted until May 24, 2011. See Union for Civil Liberty (UCL).

3 See Human Rights Council, Statement of the UN High Commissioner for Human Rights at the opening of the 14th regular session of the Human Rights Council, May 31, 2010.

4 See TRCT, Interim Report (July 17, 2010 - January 16, 2011), April 2011.

5 In its April Report, the Commission lists the major obstacles which have caused its investigation to falter: 1. TRCT has no power to subpoena witnesses or evidence; 2. Lack of witness-protection; 3. Credibility obstructed by the fact that TRCT was established by the Government. See TRCT Interim Report, April 2011.

6 See People's Information Center.

7 See UCL.

8 Thailand is one of the few remaining countries in the world to prosecute crimes of *lèse majesté*. Individuals who insult, defame or threaten the Thai royal family can be sentenced to up to 15 years of imprisonment. The Ministry of Information and Communication Technology also uses the charge of *lèse majesté* to block or remove websites discussing critical issues relating to the monarchy. Cases of *lèse majesté* are brought under Article 112 of the Criminal Code throughout Thailand, and are rarely reported in the press. Trials may also be carried out in closed court so that it is difficult to have precise numbers of such cases. As of April 2011, five major legal cases involving *lèse majesté* were in progress. See UCL.

9 Five police officers were prosecuted only for relatively minor crimes since the body of Mr. Somchai was never recovered, and only one out of the five, Police Major Ngern Thongsuk, was convicted and sentenced to three years in prison in January 2006. He appealed the decision and remained out on bail. Yet, one day before the appeal verdict was to be read in September 2010, Police Major Ngern's family reported that he had been missing since a mudslide in 2008 and began judicial proceedings to have this formally declared.

10 Under Article 182 of the Criminal Procedural Code, the Court could only proceed in reading the verdict without the presence of the defendant, one month from the issuance of the warrant.

11 They were charged with "trespass by using force or joining with more than two persons associating together to intrude forcefully or to cause harm" (Sections 362 and 365 (1) (2) of the Criminal Code), "illegal gathering and using force with ten or more persons to cause damage or to give rise to public disorder" (Section 215), "failing to disperse when ordered to by the police" (Section 216), "collaborating with five or more persons to incite others to violence in one form or another to threaten the lives and safety of others" (Section 309 § 2), "collaborating to detain or restrict other persons" (Section 310) and "using loud speakers without permission" (Law on Restricting Loudspeaker Advertising, 1950).

12 Sections 116 and 215(3) of the Criminal Code apply to acts of or incitement of violence or unrest with an intention to cause harm or public disorder, to detain or restrict other persons, and to enter into a property to disturb the peaceful possession of those who own the property. Convictions under those sections could lead to imprisonment of up to seven years and five years, respectively.

13 On August 27, 2009, the peaceful assembly was violently dispersed by the police after a large number of the 1,959 workers dismissed by the Body Fashion Thailand Limited (a subsidiary of Triumph International) and their supporters protested at the Parliament in Bangkok.

14 The lawyer for the defendant exposed that there were no clear criteria for the charge of lèse majesté; typically the prosecution witness asserted that he "believed" or was "of the opinion" that the matter of the comments was illegal, but could not point to any directive or example of what constituted illegality.

15 See UCL.

Extracts from the Annual Report 2011 of the Observatory for the Protection of Human Rights Defenders (FIDH-OMCT)