

# THE SITUATION OF HUMAN RIGHTS DEFENDERS

# THAILAND

UPR Briefing Paper – September 2015

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Immediately following its participation in first cycle of the Universal Periodic Review on 5 October 2011, the government of Thailand accepted 100 of 172 recommendations. At the adoption of the report, Thailand announced its decision to accept an additional 35 recommendations, in full or in part, including issuing a standing invitation to Special Procedures. Many of the rejected recommendations (37) addressed issues that contributed to the difficult environment for human rights defenders (HRDs), including challenges to freedom of expression and association and broad application of security laws. In the context of the military junta of May 2014, the pressures against HRDs, in particular those expressing dissent, have intensified. The Government has stepped up the use of *lèse majesté* provisions to prosecute HRDs and others who criticise the Government, and detention is increasingly used to discourage activities of civil society.

## 1. Risks and obstacles facing human rights defenders

- HRDs in Thailand have faced significantly more risk since the military junta took power in May 2014; the current formulation of the military government, the National Council for Peace and Order (NCPO), is neither more transparent nor more democratic.
- Human rights activists, non-governmental workers (NGO) workers, and others who have expressed dissent have been detained, often incommunicado and in military facilities. Some groups estimate that since the coup, nearly 600 individuals have been arbitrarily questioned or detained under Article 15 of Marital Law.<sup>1</sup>

## 2. Official restrictions on space for human rights defenders

- The government of military leader (now Prime Minister) Prayuth Chan-Ocha has taken action to implement existing laws so as to seriously restrict freedom of expression. The widespread and often disproportionate application of Article 112 of the Criminal Code (known as the *lèse majesté* law) is a serious barrier to free speech.
- On 7 August 2015, military courts – who have tried over 700 civilians since the coup, in violation of Thailand's obligations under the ICCPR<sup>2</sup> - handed down sentences of 30 and 28 years to Mr. Phongsak Sribunpeng and Ms. Sasiwimol Patomwonga-ngarm, respectively, for Facebook posts deemed to be critical of the monarchy and members of the royal family. These are the weightiest sentences documented in nearly a decade; the number of individuals convicted, or in detention, for *lèse majesté* offences has skyrocketed from 5 to 40 in approximately the last year.<sup>3</sup>
- NCPO Order 3/2015 severely limits freedom of association and peaceful assembly by banning gatherings of more than five people. Peaceful public demonstrations of dissent have been prohibited, including reading George Orwell's *1984*. On 26 June 2015, 14 student activists were arrested and charged with violations of 3/2015 and Criminal Code Article 116, relating to 'sedition'. A lawyer seeking to assist the students, Ms. Sirikan Charoensiri, was harassed and intimidated by police officers who seized her car without a warrant. When Ms. Sirikan tried to file an official complaint, officers threatened to file a countersuit and subsequently went to her parents' house in search of information on Ms. Sirikan's 'background.'

## 3. Intimidation and reprisals against defenders accessing international human rights mechanisms

- There is little information available on this point. However, it is possible that the risks of prosecution outlined in this briefing paper, faced by HRDs, dissuade them from engaging with international mechanisms.

## 4. Groups of defenders at particular risk

- HRDs working on issues of corporate accountability, including environmental and social impacts of business operations, are highly vulnerable. They face structural challenges as a result of Thailand's slow justice system and impunity for corporate actors, even after violations have been identified.<sup>4</sup> They also face intimidation,

physical violence, and death, and despite well-known risks do not benefit from any protective measures by government authorities.<sup>5</sup>

- In a June 2014 case, the NCPO deployed soldiers to suppress peaceful protest of individuals from Na Nong Bong village against Tungkhum Limited mining company.<sup>6</sup> The soldiers allegedly destroyed banners protesting the mine and threatened protestors with further restrictions of expression if they could not negotiate an agreement with the company.
- Ethnic Karen land rights activist Mr. Pholachi Rakchongcharoen, or Billy, disappeared on 17 April 2014. He had worked with local communities to seek justice for burning of homes and properties by officials of the Kaeng Krachan National Park in 2010-2011.<sup>7</sup>
- Mr. Chai Bunthonglek, a land rights activist in Surat Thani province in southern Thailand, was shot and killed on 11 February 2015; there has been no official investigation of his death, and no accountability for the deaths since 2010 of three other activists working to reclaim land used by a major palm oil company.<sup>8</sup> In similar cases in December 2014, Mr. Sumsuk Kokrang and Mr. Pitan Thongpanang were shot while traveling to meet with local villagers affected, respectively, by the operations of palm oil and mining companies.
- Harassment of environmental and corporate accountability HRDs is not limited to Thai citizens. Mr. Andy Hall, a British citizen and advisor to the Migrant Worker Rights Network, was tried on 20 July 2015 on charges of criminal defamation linked to his investigations of labour abuses on plantations owned by the Natural Fruit Company Ltd. The company has also filed civil lawsuits seeking damages of 8.7 million USD, while government prosecutors have charged Hall with violations of the Computer Crimes Act.<sup>9</sup>
- Closely linked to the above are migrant workers' organisations and migrant rights activists. Migrants are particularly vulnerable when they make allegations against employers for mistreatment, facing retaliation in the form of dismissal, demotion, and threats to immigration status. Thai law does not permit migrant workers full freedom of association.<sup>10</sup>
- Journalists are under threat as space for media freedoms closes. Government prosecutors in July 2015 charged two journalists with criminal libel for an exposé on the involvement of the Royal Thai Navy in smuggling of Rohingya from Myanmar.<sup>11</sup> Although they were acquitted on 1 September, the use of defamation and libel continues to create a chilling environment for freedom of speech.
- LGBTI HRDs have documented cases of verbal harassment and threats of sexual violence from individuals, government-aligned media, and plainclothes military officers. The incarceration of transgender HRDs is particularly problematic, as transwomen have in at least one case been assigned to male prisons, where they are vulnerable to abuse, including sexual abuse and gender-based violence.<sup>12</sup>

#### **5. Response of the state regarding protection of HRDs**

- The NCPO and PM Prayuth have not taken steps to ensure an enabling environment for the protection of HRDs. To the contrary, at a press conference in March, PM Prayuth 'joked' about punching a journalist who pressed for evidence of the junta's successes while in power. In various other public remarks, Prayuth claimed that he had the authority to 'shut down all media' and noted that he would 'probably just execute' journalists who published critical comments of the government.<sup>13</sup>
- The NCPO is currently drafting a Constitution into which the OHCHR has provided expert input. International experts' recommendations include the need to strengthen the right to participate in public affairs by eliminating appointment of parliamentary members; ensuring that the right to vote is not restricted based on political affiliation; and the provision and protection of rights to freedom of expression, assembly and association without arbitrary limitations.<sup>14</sup>

#### **6. Recommendations to the Thai Government**

- Cease judicial and police harassment of HRDs, and take specific measures to protect women and LGBT HRDs.
- Ensure sexual orientation and gender identity are included as protected attributes (that is, attributes on the grounds of which discrimination is prohibited) in equal opportunity and anti-discrimination laws at the national and provincial levels.
- End impunity for crimes against HRDs, including through: the development of legislation that explicitly acknowledges and protects their work and gives full force and effect to the UN Declaration on Human Rights Defenders; and the prompt, independent and effective investigation, prosecution and remediation of all threats and attacks against HRDs.

- Ensure that official decisions regarding natural resource exploitation, including plantation agriculture, fully consider the inputs of HRDs; are made with the free, prior, and informed consent of affected communities; and include mechanisms for effective monitoring of projects and remedy for negative impacts.
- Amend or withdraw legal measures that limit freedom of expression and assembly, including the Martial Law, the Emergency Decree, the Computer Crimes Act, the Internal Security Act, the Public Assembly Act and the lèse majesté provision of the Criminal Code.

**The voices of independent civil society in Thailand should be central to the debate over how the country can move forward toward a democratic, inclusive political process and much-needed stability. However, the actions the Government has taken have had the opposite effect, and have posed both implicit and explicit barriers to participation for all parts of Thai society, in particular those most vulnerable – including HRDs.**

#### **About this briefing paper**

ISHR encourages States to consult UPR submissions by local activists as well as to make a recommendation to Thailand regarding the protection of HRDs. An excellent regional source of information on the situation facing HRDs is Forum-Asia (<http://www.forum-asia.org>) while local organisations include Togetherness for Equality and Action and the Coalition on Democracy and SOGI Rights. For further information on this briefing paper, contact Sarah M. Brooks ([s.brooks@ishr.ch](mailto:s.brooks@ishr.ch)).

<sup>1</sup> <http://adn21.asia/?p=1242>

<sup>2</sup> <http://www.lwrc.org/thailand-trials-of-civilians-in-military-courts-violate-international-fair-trial-rights-statement/>

<sup>3</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16310&LangID=E>

<sup>4</sup> <https://www.hrw.org/report/2014/12/16/toxic-water-tainted-justice/thailands-delays-cleaning-klity-creek>

<sup>5</sup> <http://www.ishr.ch/news/thailand-ensure-independent-impartial-investigation-murder-land-rights-activists>

<sup>6</sup> <http://adn21.asia/?p=1242>

<sup>7</sup> <http://bangkok.ohchr.org/files/ROB%20Press%20Statement%20160415.pdf>

<sup>8</sup> <https://www.hrw.org/news/2015/02/14/thailand-land-rights-activist-gunned-down>

<sup>9</sup> <https://www.hrw.org/news/2015/07/19/thailand-end-case-against-migrant-worker-activist>

<sup>10</sup> <https://www.hrw.org/news/2015/07/27/joint-letter-secretary-state-john-kerry>

<sup>11</sup> <https://www.hrw.org/news/2015/07/08/joint-letter-thai-pm-phuketwan-journalists>

<sup>12</sup> <http://www.prachatai.com/english/node/5224>

<sup>13</sup> <http://uk.reuters.com/article/2015/03/25/uk-thailand-junta-media-idUKKBN0ML0RL20150325>

<sup>14</sup> <http://bangkok.ohchr.org/files/OHCHR%20Technical%20Note%20on%20key%20principles%20under%20the%20constitution%201505%20fin.pdf>