



THAILAND: SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

63RD SESSION, 23 APRIL - 18 MAY 2018, LIST OF ISSUES PRIOR TO REPORTING

INTRODUCTION

Amnesty International would like to draw the United Nations (UN) Committee against Torture's attention to the following information in advance of the adoption of the List of Issues Prior to Reporting for Thailand's second periodic report under the Convention against torture and other cruel, inhuman or degrading treatment or punishment (the Convention).

Thailand has been under the authority of the military National Council for Peace and Order (NCPO) since May 2014. Restrictions violating several human rights, including the rights to freedom of expression, peaceful assembly and association continue in place. Activists, journalists, politicians, human rights lawyers and human rights defenders have been arrested, detained and prosecuted for peacefully expressing opinions about the government and monarchy.

Amnesty International has documented the continuing practice of torture and other ill-treatment by the Royal Thai Police and Royal Thai Army; the failure to criminalise torture and continuing use of martial law and emergency powers and expansion of military powers of detention to allow for arbitrary detention of individuals in incommunicado detention without safeguards; failure to investigate complaints and reports of torture and other acts of ill-treatment and prosecute security forces suspected of involvement in such acts and failure to provide full redress for victims; as well as arbitrary arrest, detention and forcible returns of refugees and asylum-seekers without due process and assessment of their risk of persecution, including risk of torture. This submission sets out the main concerns and links to relevant publications issued by the organization since the last review.

CONTINUING PRACTICE OF TORTURE AND OTHER ILL-TREATMENT BY THE ROYAL THAI POLICE AND ROYAL THAI ARMY (ARTICLES 1 AND 16)

During the period under review, Amnesty International as well local organizations and community members reported that the military arbitrarily arrested, tortured or otherwise ill-treated Muslim men arrested and interrogated in the context of attacks by militants in southern Thailand.

Torture methods included beating, suffocation by plastic bags, strangling by hand or rope, waterboarding and electrocution of genitals.

In addition, military interrogators have used similar torture methods against persons suspected of security offences elsewhere in the country, in particular during the seven days of incommunicado detention allowed under military orders (on which see below).

Royal Thai Police officers have tortured or otherwise ill-treated a wide range of people, among them migrants, people suspected of using drugs and members of ethnic minorities.

See further:

- Amnesty International, *"Make Him Speak by Tomorrow": Torture and Other Ill-Treatment in Thailand*, 28 September 2016, <https://www.amnesty.org/en/documents/asa39/4747/2016/en/>
- *Attitude Adjustment: 100 days under martial law*, 11 September 2014, ASA 39/011/2014, <https://www.amnesty.org/en/documents/asa39/011/2014/en/>
- Amnesty International (AI) and the International Commission of Jurists (ICJ): *Thailand must follow through on commitments to prevent torture and ill-treatment*, 26 June, ASA 39/6589/2017, <https://www.amnesty.org/en/documents/asa39/6589/2017/en/>

FAILURE TO CRIMINALISE TORTURE (ARTICLES 1 AND 4)

In February 2017, the National Legislative Assembly returned a draft Prevention and Suppression of Torture and Enforced Disappearance Act to the Cabinet for "more consultations". The latest draft addressed gaps in the current legal framework relating to torture and enforced disappearances. Further amendments are needed to bring the Draft Act into line with Thailand's obligations under the Convention. The following were the key recommendations made by Amnesty International and the International Commission of Jurists (ICJ), within a detailed submission to the Thai government in November 2017:

1. Definition of the crime of torture: ICJ and Amnesty International recommended that the definition of torture provided in the Draft Act mirror the definition provided in article 1 of the Convention. Specifically, the organizations recommend adding the element of intention to the definition, including a "lawful sanctions" clause, and expanding the clause on discrimination to specify that an act committed "for any reason based on discrimination of any kind" may constitute torture. To the extent that terms in this article are unclear, they should be interpreted with respect to their meaning under international law.
2. Emergency situations: The ICJ and Amnesty International believe that it is imperative to retain the article of the Draft Act which states that the prohibition on torture applies in all circumstance, including states of emergency, and warn that its removal would leave a key element of that Convention unimplemented in Thai law.
3. Non-refoulement: The ICJ and Amnesty International also believe that it is imperative to retain the article within the Draft Act which prohibits the forcible transfer of individuals to where they would subsequently be at risk of torture or enforced disappearance. Thai law does not currently protect individuals from refoulement, and Thailand would continue to fall short of its obligations under international law if it passed a version of the Draft Act that did not include an effective non-refoulement provision.
4. Jurisdiction: The ICJ and Amnesty International were not able to provide a recommendation on whether jurisdiction over crimes defined in the Draft Act should rest with the Criminal Court on Corruption and Misconduct Cases, as provided in the current version of the Draft Act, or with ordinary criminal courts, as suggested by the National Legislative Assembly. The organizations emphasized that under international human rights law and standards, the key requirements for any court with jurisdiction over these crimes are that it is a competent, independent, adequately resourced civilian court which follows proceedings that meet international standards of fairness.
5. Command responsibility: ICJ and Amnesty International recommended strengthening the provision for command responsibility in the Draft Act by specifying that a supervisor may be held responsible for the actions of a subordinate "under his or her effective authority or control". The organizations also recommended adding a clause allowing for a supervisor to be held accountable when he or she "consciously disregarded information which clearly indicated" that a subordinate was about to or had already committed a crime defined in the Draft Act. Beyond these recommendations, the two organizations stated that they would strongly oppose any amendment that would shield from accountability supervisors exercising effective authority and control over subordinates, regardless of their rank or position.

See further:

- Amnesty International and the International Commission of Jurists: *Recommendations Concerning the Draft Prevention and Suppression of Torture and Enforced Disappearance Act* (2016), November 2017, <https://www.amnesty.org/en/documents/asa39/7829/2017/en/>
- Amnesty International and the International Commission of Jurists: *Thailand Must Follow Through on Commitments to Prevent Torture and Ill-treatment*. 26 June 2017, ASA 39/6589/2017, <https://www.amnesty.org/en/documents/asa39/6589/2017/en/>
- Amnesty International and the International Commission of Jurists (ICJ): *Thailand: Prioritize the amendment and passage of legislation on torture and enforced disappearances*, 9 March 2017, ASA 39/5846/2017, <https://www.amnesty.org/en/documents/asa39/5846/2017/en/>
- Thailand: *Joint statement on the International Day of the Victims of Enforced Disappearances*, 30 August 2017, ASA 39/7015/2017, <https://www.amnesty.org/en/documents/asa39/7015/2017/en/>

CONTINUING USE OF MARTIAL LAW AND EMERGENCY POWERS AND EXTENSION OF MILITARY POWERS OF DETENTION TO ALLOW FOR ARBITRARY DETENTION OF INDIVIDUALS IN INCOMMUNICADO DETENTION WITHOUT SAFEGUARDS (ARTICLES 2, 11 AND 16)

The National Council for Peace and Order has extended its powers to allow for the detention by the military of individuals in unofficial places of detention without charge and without safeguards, including against torture or other ill-treatment, for up to a week, under powers granted by Head of the NCPO Orders 3/2015 and 13/2016. Military officials have used these powers to arbitrarily detain individuals accused of a broad range of activities, including peaceful protest. A number were held incommunicado.

See further:

- “*Attitude Adjustment: 100 days under martial law*”, 11 September 2014, ASA 39/011/2014, pp 22-27 <https://www.amnesty.org/en/documents/asa39/011/2014/en/>
- “*Martial Law Detainees at Risk of Torture*”, 20 March 2015, ASA 39/1266/2015, <https://www.amnesty.org/en/documents/asa39/1266/2015/en/>
- “*Prisoner of conscience must be released*”, 19 April 2016, ASA 39/3866/2016, <https://www.amnesty.org/en/documents/asa39/3866/2016/en/>
- Further Information: *Peaceful Activist Face Charges*, 22 April 2016, ASA 39/2289/2016, <https://www.amnesty.org/en/documents/ASA39/3289/2016/en/>
- *Lawyer and Activists Detained for Facebook Posts*, July 2017, ASA 39/6195/2017 ISSUE DATE: 10 MAY 2017, <https://www.amnesty.org/en/documents/ASA39/6195/2017/en/>

FAILURE TO INVESTIGATE COMPLAINTS OF TORTURE, PROSECUTE SECURITY FORCES OFFICIALS AND PROVIDE FULL REDRESS FOR VICTIMS (ARTICLE 12 AND 14)

Amnesty International remains concerned that authorities are failing to ensure that complaints and other reports of torture and other ill-treatment are investigated promptly, impartially, independently and efficiently, and that where sufficient, admissible evidence is obtained, those suspected of involvement in such acts, be they police or military officers, are prosecuted in fair proceedings. Insufficient constitutional safeguards and the existence of immunity provisions, including in Head of NCPO Orders 3/2015 and 13/2016, have compromised access to justice and redress for victims of torture. Following the revocation of the 2007 Constitution after the military coup, on 7 October 2014 the Pattani Provincial Court ruled that Hasan Useng, who had alleged being tortured, was not entitled to judicial remedies or reparation because his request had been made under Article 32 of the 2007 Constitution, which had been revoked at the time of the judgment.

In addition, immunity clauses for the NCPO in Thailand’s Interim and 2016 Constitutions, and Head of NCPO Orders No. 3/2558 and No. 13/2559 could be used to shield military and other officials from accountability for torture and impede the ability of authorities to investigate complaints or prosecute suspected perpetrators.

Police, prosecutors and courts, when confronted with allegations of torture or other ill-treatment, have been either unable or unwilling to investigate such allegations in good faith.

See further:

- *“Make Him Speak by Tomorrow”: Torture and Other Ill-Treatment in Thailand*, September 2016, (ASA 39/4747/2016)
- *“Thailand: Alleged torture victim denied redress”*, press release, 13 October 2014, <https://www.amnesty.org/en/press-releases/2014/10/thailand-alleged-torture-victim-denied-redress/>
- *“Attitude Adjustment: 100 days under martial law”*, (ASA 39/011/2014), 11 September 2014, <https://www.amnesty.org/en/documents/asa39/011/2014/en/>

REPRISALS AGAINST THOSE WHO REPORT TORTURE (ARTICLE 13)

Amnesty International has documented the initiation of criminal proceedings in reprisal against individuals reporting on torture, including against the organization’s own staff. The reports also highlights the chilling effect on freedom of expression and redress generally of the state’s growing use of criminal proceedings against individuals for exercising their right to freedom of expression, including to seek redress. Amnesty International was forced to cancel a press conference in Bangkok when it launched its report *“Make Him Speak by Tomorrow: Torture and other Ill-treatment in Thailand”* due to threats of arrest against its staff.

See further:

- Amnesty International, *“They cannot Keep Us Quiet”* ASA 39/5514/2017, 9 February 2017, <https://www.amnesty.org/en/documents/asa39/5514/2017/en/>, pp14-15.
- Amnesty International, *“Defamation Charges Withdrawn Against Amnesty International Chairperson”* 1 November 2017, <https://www.amnesty.org/en/latest/news/2017/11/thailand-defamation-charges-dropped-against-amnesty-international-chairperson>
- Amnesty International, *“Thailand: Torture Victims must be Heard”*, 28 September 2016, available at <https://www.amnesty.org/en/latest/news/2016/09/thailand-torture-victims-must-be-heard/>

FAILURE TO TOTALLY PROHIBIT, IN LAW AND PRACTICE, STATEMENTS OBTAINED BY TORTURE (ARTICLE 15)

Thai law allows courts to consider statements obtained by torture and admit them as evidence, based on a cost-benefit analysis, which undermined the very essence of the absolute prohibition in Article 15 of the Convention. Article 226(1) of the Criminal Procedure Code provides that,

“Where it appears to the court that any evidence is just per se but it has been obtained by an unjust act or by result of an information produced or obtained through an unjust act, the court shall exclude it, save where the admittance of such evidence would be more beneficial to the carriage of justice than detrimental to the criminal justice standard or fundamental rights and liberties of the people.”

A senior member of the Thai judiciary confirmed in an interview with Amnesty International that this provision is, in judicial practice, understood to mean that “a court has discretion to weigh the evidence even though the detainee was tortured into providing it.”¹

CONTINUED DENIAL OF FORMAL LEGAL STATUS, ARREST, DETENTION AND DEPORTATION OF REFUGEES AND ASYLUM-SEEKERS (ARTICLE 3, 11 AND 16)

Thailand continues to host more than 100,000 refugees and asylum-seekers; they include Myanmar nationals in camps along the Thailand-Myanmar border, and refugees in the capital, Bangkok, and other cities. Without a formal legal status in Thailand refugees and asylum-seekers remain vulnerable to arrest, indefinite arbitrary detention and refoulement. In May 2017, Thai authorities assisted in the extradition of Turkish national Muhammet Furkan Sökmen from Myanmar to Turkey via Bangkok, despite warnings from

¹ Amnesty International, *“Make Him Speak by Tomorrow”: Torture and Other Ill-Treatment in Thailand*, September 2016, (ASA 39/4747/2016, p. 20.

UN agencies that he was at risk of human rights violations if returned. At the beginning of 2018, hundreds of refugees and asylum-seekers remained in immigration detention centre in poor conditions, where many had been held for years.

In January 2017, the Cabinet authorized the development of a system for screening refugees and irregular migrants which, if implemented in a fair and non-discriminatory manner, could represent a major step towards advancing refugee rights. The system had not been finalized by the end of the year.

Amnesty International has documented the continuing violations of the non-refoulement prohibition – including constructive refoulement and pushbacks of individuals. Arbitrary and sometimes indefinite detention of refugees and migrants in conditions which do not meet international standards, has increased since the Committee's last review.

The Government should provide information on any measures it has taken to prevent refoulement and arbitrary indefinite detention, including to amend immigration legislation to grant refugees a formal legal status, and seek alternatives to detention. This also in view of Thailand's undertakings to improve the situation of refugees and migrants at the UN Human Rights Council's UPR in 2015²; and in the Thai Cabinet's passing of a resolution on 10 January 2017, to create a "Committee for the Management of Undocumented Migrants and Refugees"³ to develop policies concerning the screening and management of undocumented migrants and refugees.

See further:

- Amnesty International *"Between a Rock and a Hard Place"*, ASA 39/7031/2017, 29 September 2017, <https://www.amnesty.org/en/documents/asa39/6677/2017/en/>, pp 21-45.
- Amnesty International, Human Rights Watch and others: *Thailand: Implement Commitments to Protect Refugee Rights. End Detention and Forcible Returns of Refugees*, 6 July 2017, ASA 39/6677/2017, <https://www.amnesty.org/en/documents/asa39/6677/2017/en/>

ENFORCED DISAPPEARANCES (ARTICLE 1 AND 4)

The government has failed to make progress in resolving open cases of enforced disappearance. A Thai delegation told the UN Human Rights Committee in March 2017 that it was considering forwarding the cases of the enforced disappearances of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen to the Department of Special Investigation, but had not done so by the beginning of 2018.⁴

In March 2017 the National Legislative Assembly approved proceeding for the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, which Thailand signed in 2012. However, by early 2018 Thailand had neither ratified the treaty nor provided a timeframe for doing so.

See further:

- Amnesty International *"Sad Day for Justice as Police Officers Acquitted and Family Denied Right of Co-plaintiff in the Enforced Disappearance of Leading Human rights Defender"*, 29 December 2015, ASA 39/3132/2015, <https://www.amnesty.org/en/documents/asa39/3132/2015/en/>
- Amnesty International, ICJ and others Joint Statement on the International Day of Disappearances, 30 August 2017, ASA 39/7015/2017, <https://www.amnesty.org/en/documents/asa39/3132/2015/en/>

² Human Rights Council, National Report to the Human Rights Council for the Universal Periodic Review, UN Doc. A/HRC/WG.6/25/THA/1, 12 February 2016, para. 110. In 2016, Thailand also accepted a recommendation made during its Universal Periodic Review before the Human Rights Council to consider ratifying the 1951 Refugee Convention. Human Rights Council, Report of the Working Group on the Universal Periodic Review, UN Doc. A/HRC/33/16, 15 July 2016, para. 158.21.

³ Cabinet Resolution 10/01, B.E. 2560, 10 January 2017.

⁴ Thailand: Joint statement on the International Day of the Victims of Enforced Disappearances (ASA 39/7015/2017)