

**AMNESTY
INTERNATIONAL**



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Prime Minister Abhisit Vejjajiva
Bangkok
Thailand

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Dear Prime Minister

**OPEN LETTER
CALL FOR AN INDEPENDENT AND IMPARTIAL INVESTIGATION**

Amnesty International has observed Thailand's ongoing political crisis with great interest and concern, and regrets the violence between 12 March and 20 May 2010, which resulted in at least 88 deaths and more than 1,800 injured. It is clear that human rights abuses were committed by both security forces and the protesters of the United Front for Democracy Against Dictatorship (UDD), especially on 10 April and over the course of the protests' final week. While Amnesty International recognizes that the resolution of the political crisis will necessarily entail political reform, the promotion and protection of human rights - always of critical importance in good governance - should occupy a central place in your government's efforts to resolve this crisis.

Amnesty International also notes that Thailand was elected on 13 May to the UN Human Rights Council, as the final stages of the protests began. A seat on the Council underlines Thailand's responsibility to uphold international human rights law and standards, including adherence to its international human rights treaty obligations.

As your administration embarks on the process of moving the country forward, Amnesty International wishes to convey a number of human rights-related concerns and recommendations for your consideration.

ACCOUNTABILITY

On 20 April 2010, Amnesty International published a Public Statement, *Thailand: Accountability must prevail in political crisis*. As accountability remains a key concern, we welcome your assurances on 21 May that "an independent investigation of all the events that have taken place during the protests" would be carried out "in a transparent manner".

Independence is of paramount importance to any investigation's credibility; whatever body undertakes the effort should be free from affiliation with either the government or the UDD.

The investigation must also be impartial, including alleged human rights abuses by both sides. Prosecutions should reflect the evidence and findings, regardless of the alleged abuser's political allegiances. The government should ensure that persons identified by the investigation as having participated in the use of excessive force or other human rights-related offences, including by ordering or otherwise bearing command responsibility for such offences, are brought to justice and that survivors

and families are provided with reparations in accordance with international standards. The investigation should be conducted with the view to not only establishing the facts of what transpired during the protests and violence, but also, when necessary, to initiating prosecutions against alleged perpetrators of human rights abuses. Prosecutions should adhere to international fair trial standards, and trials should not be held in camera. Your statement on 21 May that “we will allow the due process of law to operate” is also welcome in that regard. Prosecutions should be based on charges stemming from laws that were passed in Parliament, rather than from regulations promulgated under the Emergency Decree on Government Administration in States of Emergencies, B.E. 2548 (2005). The death penalty should not be included as a possible punishment.

Investigators must be professional, with expertise of relevant international human rights law and standards, and should be provided with a wide-ranging mandate to look both into the incidents themselves and into wider issues such as the military’s equipment, training and rules of engagement in confronting demonstrators. They should have broad investigatory powers, including the power to subpoena witnesses irrespective of military rank or political seniority, and to require the relevant authorities to suspend from duty officials and others allegedly involved in cases of excessive force and other human rights violations. The government must provide investigators with adequate resources to carry out their investigation, and with any information that it requires. Investigators should also have the power to make recommendations to the government with regard to: reparations to victims and their families; the enactment of specific legal, institutional and other reforms that would prevent repetition of past violations; and any necessary government actions to be taken in furtherance of their findings.

Where a human rights abuse also amounts to a crime under domestic or international law, it is essential that individual responsibility be ascribed to ensure accountability. Purely disciplinary or administrative remedies are inadequate. Remedies must be provided by an independent and impartial court of law, “especially when violation of the right to life is alleged”.¹ Similarly, international standards on the use of force require an independent review to be undertaken by judicial or prosecutorial authorities whenever firearms are used by law enforcement officials.² Identifying the individual perpetrators of human rights violations must be one of the central purposes of any investigation.³

Transparency is also critical, and results of the investigation should be published and made widely available in Thailand.

Among all of the events that have taken place during the protests, Amnesty International urges the investigation to place particular emphasis on the following seven incidents, about which it has conducted first-hand research:

- The events of the night of 10 April in the vicinity of Democracy Monument, including the possible excessive use of lethal force by security forces, and violence by protesters which may amount to human rights abuses.
- The assassination of Major General Khattiya Sawatdiphon (known as “Seh Daeng”), a military advisor for the protesters, by a sniper on 13 May.
- The unlawful killings of unarmed persons by security forces, through the reckless use of lethal force, on 14-17 May in the Rachaprarop Road, Soi Rangman, Bon Kai, Rama IV Road, Soi Nang Dupli, and Din Daeng Road areas. It appears that at least 35 unarmed people were killed, including two medics who were wearing white medical uniforms with a red cross, shot on 15 and 16 May; and a 17 year-old boy, shot on 15 May.

¹ Human Rights Committee, José Vicente et al v Columbia, (1997) Communication No. 612/1995, para. 8.2.

² UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 22-26.

³ See, e.g., Basic Principles on the Use of Force, Principles 22-26.

- The obstruction of ambulances by both security forces and protesters in the Rachaprarop Road area on 15 May.
- The use of lethal weapons by UDD protesters against unarmed persons, including Thai and foreign journalists, on 19 May in the Sarasin Road and Ratchadamri Road areas.
- The use of lethal force by unknown persons against unarmed people, including independent journalists, who were taking refuge in Wat Pathum Wanaram on the evening of 19 May. At least three unarmed persons were shot with live ammunition in that temple, two of whom, both medics, were killed. At least four other dead bodies were removed from the temple, all killed by bullets that struck them either just outside or inside the temple. Five eye-witnesses, four of whom were in the temple at the time of the shooting between 5:30 and 7:20 PM, told Amnesty International that live fire came on a downward trajectory from the south-western direction and into the temple grounds. Photographs clearly show armed men wearing military fatigues and standing between the elevated tracks of the BTS Skytrain, south-west of the temple.
- The extensive arson of 37 buildings, some of which had persons inside them, by UDD protesters on 19 May.

Thailand does not have a strong record on either investigations or accountability for human rights violations. For example, previous assurances in relation to human rights violations in southern Thailand and against Rohingyas from Myanmar and other migrants and asylum-seekers, have gone unfulfilled. An independent, impartial, thorough, and transparent investigation into recent human rights abuses would be a key step in reversing this trend.

In this regard, Amnesty International urges the government to lift the Emergency Decree in Thailand immediately.

Accountability for human rights abuses could be seriously hindered at the outset by Section 17 of the Emergency Decree which has been in effect in Bangkok since 7 April. That section confers disciplinary, civil and criminal immunity on officials for acts committed in the course of their duties, provided that the acts are committed in good faith, are non-discriminatory, and are not unreasonable or excessive in the circumstances. Amnesty International is concerned that the Decree essentially codifies immunity from prosecution for officials who committed human rights violations so long as they can claim to have done so within the section's broad terms. While this would not necessarily affect investigations into human rights violations, implicitly it could impair impartiality towards holding all alleged perpetrators to account via prosecutions.

A failure to bring the perpetrators of serious human rights abuses before the courts, or a decision to prosecute only certain types of persons (for instance, demonstrators) while refraining to prosecute others (for instance, security forces), would be incompatible with Thailand's obligations under the International Covenant on Civil and Political Rights (ICCPR), to which it acceded in 1997. Thus, invocation of Section 17 of the Emergency Decree to shield State forces from accountability in relation to possible wrongdoing would be in violation of Thailand's international obligations to provide effective remedy to people whose rights have been violated.⁴

FREEDOM OF EXPRESSION

Amnesty International is concerned that the censorship permissible under the Emergency Decree, in force since 7 April, violates the right to freedom of expression. The Decree authorizes a "competent official" to enact regulations against seeking, receiving, and disseminating materials and means of communication "which may instigate fear amongst the people or is intended to distort information which causes misunderstanding of the emergency situation affecting the security of state or public order or public morals".⁵ These powers are both vague and excessive and, despite invoking "public order or public morals", have actually led to the mere expression of opinions and views being

⁴ See ICCPR, Art. 2(3).

⁵ Section 9 (3) of the Emergency Decree on Government Administration in States of Emergencies, B.E. 2548 (2005).

penalised. According to the Centre for the Resolution of the Emergency Situation (CRES) on 25 May, at least 1,500 websites have been censored or disabled in Thailand. In addition, non-government-affiliated radio and television stations and print publications have also been taken off the air or have had their content severely restricted.

Emergency measures must distinguish between information that could threaten national security and the legitimate expression of controversial ideas. Amnesty International thus urges you to roll back censorship and other restrictions on freedom of expression so that the exchange of ideas and legitimate debate may take place among the public and within the Parliament in Thailand. Greater, and not less, protection for freedom of expression in Thailand is critical towards resolving the political crisis.

Amnesty International appreciates the challenges associated with restoring stability in Thailand in the short term, and resolving the political crisis in the longer term. Promoting and protecting human rights will contribute to meeting such challenges.

Please accept my best regards and do not hesitate to contact me with any questions or concerns.

Yours sincerely

Claudio Cordone
Secretary General (ad interim)