



# General Assembly

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## Human Rights Council

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Human rights situations that require the Council's attention

### **Written statement\* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 May 2010]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Thailand: An analysis of Thailand's non-compliance with its international human rights obligations**

1. As Thailand was elected this May 13 to the Human Rights Council (HRC), albeit as the result of a clean slate, the Asian Legal Resource Centre (ALRC) urges the members of the Council to take note of Thailand's record of non-compliance with many key international human rights obligations and ensure that its membership results in marked improvement concerning these. That Thailand was elected even as the Royal Thai Army was shooting and killing people in Bangkok amid intense political turmoil--itself a result of undemocratic and anti-human rights forces having recaptured control of key state institutions since the 2006 military coup--remains a significant concern.
2. The ALRC wishes to concentrate here on an important, succinct document against which the record of the Government of Thailand on human rights can be assessed: the Concluding Observations of the Human Rights Committee on the report of Thailand issued on July 8, 2005.
3. Five years should be sufficient time for any State party with a serious commitment to demonstrate some progress. Therefore, it is expedient to use this document as a set of benchmarks against which to measure Thailand's subsequent performance.
4. Not only has Thailand abjectly failed to make any progress on the Committee's recommendations, but in a number of respects it has seriously regressed since 2005:

Para.9: "The State party should ensure that recommendations of the National Human Rights Commission are given full and serious follow-up. It should also ensure that the Commission is endowed with sufficient resources to enable it effectively to discharge all of its mandated activities in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)."

The HRC has already been made aware that the National Human Rights Commission of Thailand is no longer in compliance with the Paris Principles, by virtue of the manner in which its new commissioners were selected and appointed, under the regressive army-sponsored 2007 Constitution of Thailand. The commissioners include among them a senior police officer, two bureaucrats and a businessman whose sole contribution to human rights prior to appointment was to be named as a violator in a report of the previous Commission. None of the commissioners have a good track record of advocacy and promotion of human rights. Their appointment is an affront to the very principles that their agency is supposed to represent, but in this it is no more than a statement of the official view of human rights from within the Government of Thailand. It is therefore not surprising that the Commission has failed to play a meaningful role to address any of the serious, persistent and entrenched obstacles to the enjoyment of human rights in the country.

Para.10: "The Committee is concerned at the persistent allegations of serious human rights violations, including... the Tak Bai incident in October 2004, the Krue Se mosque incident on 28 April 2004 and the extraordinarily large number of killings during the 'war on drugs'... The State party should conduct full and impartial investigations into these and such other events and should, depending on the findings of the investigations, institute proceedings against the perpetrators. The State party should also ensure that victims and their families, including the relatives of missing and disappeared persons, receive adequate redress. Furthermore, it should continue its efforts to train police officers, members of the military and prison officers to scrupulously respect applicable international standards. The State party should actively pursue the idea of establishing an independent civilian body to investigate complaints filed against law enforcement officials."

Some politically-motivated inquiries were established after the Tak Bai and Krue Se killings, and later into the war on drugs, but none of these led to the prosecution or conviction of perpetrators. Attempts to bring senior army and police officers responsible for the killings to justice have failed, despite ample evidence and legal grounds upon which to rest cases. The families of victims have not received any adequate redress in accordance with international standards. No significant changes have been made to the training of officers so as to protect human rights, although with the culture of impunity prevalent in Thailand such training would make no difference if not accompanied by effective measures for sanctions of perpetrators. The Government has at no time actively pursued the idea of establishing an independent civilian body to investigate complaints filed against law enforcement officials, nor is there evidence of any intent to do so in the future.

Para.13: "The Committee is concerned that the Emergency Decree on Government Administration in States of Emergency... does not explicitly specify, or place sufficient limits, on the derogations from the rights protected by the Covenant that may be made in emergencies and does not guarantee full implementation of article 4 of the Covenant. It is especially concerned that the Decree provides for officials enforcing the state of emergency to be exempt from legal and disciplinary actions, thus exacerbating the problem of impunity. Detention without external safeguards beyond 48 hours should be prohibited (art. 4). The State party should ensure that all the requirements of article 4 of the Covenant are complied with in its law and practice, including the prohibition of derogation from the rights listed in its paragraph 2..."

Not only has the Government failed to make changes to measures for declaration of a State of Emergency, but it has used the emergency regulations with increasing frequency, alongside a host of other draconian regulations to ensure that operations under the cover of emergency are not subject to constraints as envisaged under the Covenant. It has continued to guarantee impunity to state officers engaged in these operations. It has not made changes to laws concerning extended detention without external safeguards under emergency provisions; nor has it made changes to laws that allow for detention of suspects in ordinary criminal cases for up to 85 days with minimal judicial oversight.

Para.15: "The State party should guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention. The arrested person should have an opportunity immediately to inform the family about the arrest and place of detention. Provision should be made for a medical examination at the beginning and end of the detention period. Provision should also be made for prompt and effective remedies to allow detainees to challenge the legality of their detention. Anyone arrested or detained on a criminal charge must be brought promptly before a judge. The State party should ensure that all alleged cases of torture, ill-treatment, disproportionate use of force by police and death in custody are fully and promptly investigated, that those found responsible are brought to justice, and that compensation is provided to the victims or their families."

Despite becoming a party to the Convention against Torture, the Government has failed to make changes to domestic law that would prevent the incidence of torture, punish torturers or provide redress to victims in accordance either with that Convention or with the Covenant on Civil and Political Rights. Alleged cases of torture, ill-treatment and death in custody are not investigated in a manner that brings any of the perpetrators to court or secures convictions. At present, a case pending against a number of police officers accused of torturing and killing detainees in Kalasin Province has resulted in the deaths of a number of witnesses: pointing also to the sabotage of earlier steps taken towards a regime of victim and witness protection in Thailand. Not only has the Government of Thailand failed to do anything to address this situation, but it is in denial about the scale of the problem, its Permanent Representative to the UN in Geneva himself describing the assertion that the police are the top abusers of human rights in Thailand as "unsubstantiated".

Para.16. "The State party should bring prison conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners as a matter of priority. The State party should guarantee the right of detainees to be treated humanely and with respect for their dignity, particularly with regard to hygienic conditions, access to health care and adequate food. Detention should be viewed only as a last resort, and provision should be made for alternative measures. The use of shackling and long periods of solitary confinement should be stopped immediately..."

There has been no significant change in the treatment of prisoners in Thailand during the last five years. Shackling and solitary confinement remain routine practices. Prison authorities also use a variety of measures to extra-legally punish persons in their custody. The Council has already had its attention brought to the case of Darunee Chanchoenkilapakul, who was convicted and sentenced to 18 years in prison on 28 August 2009 on three counts of lese-majesty. The prison authorities denied Darunee access to medical treatment for a serious condition, denied her access to the facilities available to other detainees, and marked her out as a special prisoner by virtue of her so-called crime.

Para.18: "The State party should take adequate measures to prevent further erosion of freedom of expression, in particular, threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and that suitable action is taken against those responsible, regardless of rank or status."

Since the resurgence of the internal security state following the 2006 coup the Government has consistently undermined freedom of expression through a range of measures aimed at protecting ultra-conservative forces inside the establishment and army from growing and increasingly vociferous criticism in new media about previously unmentionable topics, especially about the role of the monarchy in politics and business. The targeting of independent website Prachatai under nebulous computer crime provisions, imprisonment of persons for lese-majesty, and recent orders to shut down anti-government websites are just a few instances of this trend. Although the Government has found it impossible to close down debate in new media, one clear victim of its anti-free expression campaign has been the mainstream conventional media. The print media especially, which in previous years had a good reputation, has in the last few years dramatically declined in standards and has been hopelessly politicized.

Para.19. "The State party must take measures to immediately halt and protect against harassment and attacks against human rights defenders and community leaders. The State party must systematically investigate all reported instances of intimidation, harassment and attacks and guarantee effective remedies to victims and their families."

The resounding failure of the Government to resolve the single-most important case of a targeted human rights defender in recent years, the police abduction and presumed killing of lawyer Somchai Neelaphaijit, is indicative of its non-compliance with this recommendation. It also speaks to the deep, entrenched, institutionalized impunity that law-enforcement officers in Thailand enjoy, as the case has dragged on over successive competing administrations without any satisfactory answers for his family, whose members have themselves been subject to repeated threats and harassment.

5. The unwillingness and incapacity of the Government to address the security concerns of human rights defenders in Thailand also speaks to its general disinterest in implementing any of the recommendations of the Human Rights Committee, as shown in this brief analysis. As the concern of the Government is only with its human rights reputation rather than human rights reality, the Asian Legal Resource Centre is gravely concerned by Thailand's election to the Human Rights Council, as it clearly does not meet the standards expected of members or even exhibit commitment to key responsibilities under international human rights law.