

## **THAILAND: The internal-security state digs in**

---

In its 2009 annual report, the Asian Human Rights Commission described the emergence of a new internal-security state in Thailand, which began to consolidate following the September 2006 coup. This state is characterized by the firm re-entrenchment of regressive anti-human rights forces and their allies in all parts of government, including in agencies ostensibly established to protect human rights. The resurgence of the internal-security state is reminiscent of its forebears of earlier decades, exhibiting an original authoritarian style, with more refined public relations and a sharper concern for new types of political and technological threats to its authority.

When 2010 began, the human rights situation in Thailand was already in a state of crisis, with continued martial law and emergency rule in the three southern-most provinces, the recent conviction of Darunee Charnchoengsilpakul for speech alleged offensive to the monarchy, pending charges against Chiranuch Premchaiporn, webmaster of the independent news site Prachatai, and a persistent lack of resolution and continued impunity in the cases of Somchai Neelaphaichit and Imam Yapa Kaseng, to name a few cases of special concern to rights defenders. The events of April-May 2010, in which a government crackdown on protestors in Bangkok left at least 91 dead and over 2100 injured, rapidly deepened the crisis. Among the features of the entrenched internal-security state are expanded use of emergency regulations to legitimate all state actions while also producing impunity; failure to meet obligations under international human rights law; the obfuscation of truth and curtailment of justice; and failure of the country's human rights institutions to perform according to their mandate. Also of great concern in 2009 was the eliminating of any middle ground in which citizens might express their views without fear of criminalization or violence.

## **A state of emergency to re-militarize the state**

---

Under the Emergency Decree on Government Administration in a State of Emergency (2005), the government of Thailand decreed a state of emergency in Bangkok and surrounding areas on 7 April 2010. On 13 May 2010, the state of emergency was expanded to include another 17 provinces in northern, northeastern, and central Thailand (for a chronology of the emergency decree's enforcement and phased withdrawal see the box in this section). The Emergency Decree, which at time of writing remains in force in Bangkok and three neighbouring provinces, gives blanket powers to state actors to take a wide range of actions, including making arrests, censoring the press, restricting movement and using armed force.

Three days after the emergency was declared, on 10 April 2010 at least 25 people were reported killed and over 800 wounded. Then, after a month of continuing protests, the state decided to end the protests with force. Between 13 and 17 May 2010, the government reported that at least 35 people were killed, all civilians, and at least 232 wounded as the military moved in to crush the protests with armed force, including through the use of snipers with high powered rifles and live ammunition against largely unarmed or poorly armed protestors, evidently with the express intention to carry out targeted assassinations under the cover of officially sanctioned but more generally directed violence. According to conservative estimates, at least 91 persons were killed in all. Other accounts put the

numbers higher, and at time of writing there are at least three fact-finding bodies collecting and analyzing differing accounts of the violence: one official commission, and two set up by civil society organizations. Meantime, the army has promoted dozens of officers who had orchestrated and participated in the killings.

During the week of 26 April 2010, the authorities claimed that behind the protests in Bangkok was a plan to overthrow the monarchy. The institution of the monarchy is a highly contentious one in Thailand, and in both the language of the Emergency Decree and other state rhetoric, is linked explicitly to national security. In addition to alleging that such a plan existed, the government released a diagram of uncertain authorship showing the alleged involved parties; the alleged participants were wide-ranging, with specific individuals, including former premiers and academics named, as well as broad categories such as the antigovernment protest group.

The release of this diagram was a highly threatening action in an already extremely charged atmosphere. On April 27, Deputy Prime Minister Suthep Thaugsuban, in his capacity as Director of the CRES, said of individuals and entities named in the diagram, that in any cases in which there was sufficient evidence then an arrest warrant would be issued. If it were necessary, orders forbidding these individuals from leaving Thailand would also be issued. Mr. Suthep did not explicate how much evidence would be sufficient for a warrant, how it would be procured, or if its existence would be made public.

At the same time, the Centre for the Resolution of the Emergency Situation (CRES), an agency that has been run out of an army base under the authority of the Internal Security Operations Command, began using the Emergency Decree to order citizens arbitrarily identified as dissident—or potentially dissident—to “report” themselves and submit to questioning by the authorities. Orders to “report” cited authority under section 11(2) of the decree, which pertains to the designation of a Serious State of Emergency, defined as a situation which “involves terrorism, use of force, harm to life, body or property, or there are reasonable grounds to believe that there exists acts of violence which affects the security of state, the safety of life, or property of the state or person, and there is a necessity to resolve the problem in an efficient and timely manner”. Subsection 2 makes it possible for state actors “to issue a notification that a competent official shall have the power to summon any person to report to the competent official or to give an oral statement or submit any documents or evidence relevant to the emergency situation”.

Such arbitrary orders for interrogation and detention have over many decades been associated with gross and widespread human rights violations in Thailand, and their re-emergence into plain view during the violence in Bangkok speaks to the entrenchment of the internal security state in 2010, and the re-militarization of ordinary policing, security and administrative functions there. In 2010, most individuals received a written order to report the night before being required to go to the army base. Upon arrival at the base, they were typically questioned individually. Most were interrogated for 2-3 hours, although some sessions lasted for up to 6 hours. Many of the questions concerned the acquaintances of the person being interrogated, and if the person knew or was somehow connected to protest organizers. Some of those interrogated reported being asked about the planned activities of the protest movement and lectured about the purported illegality of the protests. The interrogators appear to have come from a variety of government agencies, including regular police, the army, and the Department of Special Investigation, Ministry of Justice.

Individuals held under the decree have been subsequently charged with a variety of offences under the penal code, as well as with violating sections 9(1)(2) of the Emergency

Decree, which prohibits gatherings of groups of five people or more, instigating unrest, disseminating information which might scare the public, or intentionally distorting information to create misunderstanding about the state of emergency to a degree that affects national security, public order or public morals. Some have already been sentenced to periods of one, two or three years' imprisonment.

To take one specific case, on 2 May 2010, three students, including Mr. Anuthee Dejthevaporn, secretary general of the Student Federation of Thailand (SFT), Ms. Suluck Lamubol, a fourth-year history student at Chulalongkorn University and SFT executive committee member, and Mr. Sanat Noklek reported to the CRES as ordered. At a public seminar on May 5 they explained what had happened to them.

According to Suluck, six policemen had visited her house and told her that if she did not go, an official arrest warrant would be issued against her. She said that the students were not allowed to bring a lawyer with them, and according to a report on the online independent news site Prachatai, they "were told not to worry as it was just for talks with police and there was no need for lawyers". They were questioned for five hours about their political commitments and acquaintances, without learning the identities of their interrogators.

Anuthee explained that two policeman came to his house, gave him the document ordering him to report the next morning, and told him that if he did not do so, an arrest warrant would be secured. Anuthee also claimed that he had been followed by Thai intelligence officers prior to this time. During his interrogation, he was asked about the protests, including how much money people were paid to attend.

Sanat was not at home when two policemen came to his house to present him with the order to report the next morning, and so his grandmother received it for him. The policemen harassed his grandmother, and told her that her grandson should not support the red-shirt protestors. He and the other students reported that the regular police, DSI, and army officers who interrogated them used a mixture of intimidation and attempted friendliness. At no point did they give any of the students any knowledge of what evidence had been collected against them or the reasons that they in particular had been called.

On 16 May 2010, Krishna Thanchayapong, 34, and Surachai Phringpong, 19, left the main protest site in Bangkok at Ratchaprasong and shortly after were stopped with a younger friend while travelling by car through a nearby military checkpoint. On October 9, Prachatai gave an account of their arrest, torture, sentencing and imprisonment, which is worth citing at length:

"Krishna, the driver, said that when all three got out of the car, about 20 military troops suddenly surrounded them and searched them, seizing their mobile phones and cameras. The troops tied their hands behind their backs and forced them to face a wall and kneel down. During that time, they felt that guns were pointed at them, so they did not dare look round.

After a while, a military officer asked them what they knew about 'the mob', who the key red-shirt guards were, where weapons were hidden, and which red-shirt guards had fought the military with weapons. All the while, they were questioned at gunpoint.

Krishna told them that he did not know what they were asking, and he was just a demonstrator sympathetic to the cause of the red shirts.

Less than a minute later, a hooded military officer appeared and threatened that if they did not tell the truth, they would be strangled to death. They, however, did not provide the answers which the military wanted. So the troops strangled them. According to Krishna, they were also kicked and trampled on their backs. The physical abuse went on for about 45 minutes, all filmed by a military photographer.

Afterwards, a military officer appeared whom Krishna assumed to be their commander, as the other soldiers saluted him.

The officer poured Ronson lighter fuel on their heads and faces, stepped back about one metre from them, and lit a lighter. With the lit lighter, he tucked fireworks in their backs, and threatened to set fire to them if they did not provide information.

Meanwhile, they were whipped with a rope, and data from their mobile phone cameras was loaded onto the soldiers' notebook computer. This included photos of them taken when they were waiting to go on the red-shirt stage at Ratchaprasong and of Surachai when he was giving his speech. When the soldiers saw the photos, they accused them of lying, and shouted to their comrades that the three of them were involved with the red shirts, and asked them how much they had been paid.

After the soldiers were satisfied with the beating given to them, they were given papers to sign. Krishna and Surachai did not read the content as they feared being shot or disappeared if they were too slow. The hooded soldier threatened that if they did not confess in front of the press, they would be killed.

Krishna then noticed that the soldiers were not displaying any name tags or ranks.

Later, they were ordered to turn and look toward soldiers forming a line. They saw the soldiers place several items on a piece of cloth on the ground including fireworks, cigarette lighters, slingshots, pellets and fuel bottles.

The soldiers told them that the press would be called, and if they did not confess in front of the press, or said anything different from what they were instructed to say, they would be killed.

About 10 minutes later, about 5-6 reporters arrived, and Krishna told them just that they had come to join the red-shirt rally.

After the reporters left, the soldiers told them that they were asking for trouble for lying to them and not answering the reporters as they had been told to do. They were forced to sign another set of papers, which they again signed without reading as they thought that it was futile and they wanted to be sent to the police immediately so they could survive.

The police came and they were taken to Pathumwan Police Station in a police detention vehicle. About 10 soldiers followed them there and told police to make a report as the soldiers dictated it. Krishna said that the police did not interrogate them at all, but just copied what had been written by the soldiers. They were denied the right to contact a lawyer or family members.

...

The police woke them at about 4-5 am to sign more papers. Drowsy, they again signed without reading them as they thought it would make no difference.

In the morning, the police took Surachai and Krishna to Pathumwan District Court...

At the District Court, the indictment was read out and they confessed, as they had no one to consult, and were afraid as a result of the soldiers' intimidation.

The District Court ruled that day that they had violated Section 9(2)(4) of the Emergency Decree, which prohibits assembly and use of public roads, and Section 83 of the Penal Code for conspiring to commit a crime. They were sentenced, according to Section 18 of the Emergency Decree to two years' imprisonment, and as they had pleaded guilty, the sentence was commuted to one year.

The court cited a list of items which were claimed to have been seized from them, including 3 knives, a slingshot with 20 metal pellets, a brass knuckle, makeshift guns, a firework, a lighter, a bottle of gasoline, a mobile phone, and 3 cameras.

They insisted that they had no such things.

Their case is now on appeal. Their bail requests have been denied by the District Court which claimed that they might jump bail and commit more crimes.

They are currently detained in Zone 8 of Khlong Prem Prison with other 7 red shirts who were also accused of violating the Emergency Decree.

The prison allows only family members to visit them. Others can visit only when a family member signs to endorse them as relatives. And visits are allowed only on Tuesdays."

The description of this case mirrors the type of systemic abuses and denials of basic rights at all levels found in the judicial system of neighbouring Burma, where courts are in no way independent and state officials operate free from qualms about the possibility that action might be at any time taken against them for arbitrary arrest, detention, torture and violations of human dignity in the name of state security. It is a searing indictment on the government of Thailand, and an indicator of the extent to which the internal security state has again taken hold of it, that there is little to distinguish the account given above—apart from the personal and place names—from the accounts of arrest, torture and imprisonment that followed the crackdown on monk-led protests in Rangoon during 2007, only a few hundred miles distant and, it seems, not so far apart in terms of the impunity that state officers enjoy and the extent to which the courts are willing to be complaisant with executive demands.

The arrest of Mr. Sombat Boonngammanong on 27 June 2010 also clearly illustrates the arbitrary nature of detention under the Emergency Decree and the threat to liberty posed by it. After the ouster of former Prime Minister Thaksin Shinawatra in the 19 September 2006 coup, Sombat ran a political commentary website critical of both the former PM and the military coup which ousted him. On June 26, Sombat held a peaceful memorial at the site of killings that took place during the crackdown on anti-government protestors in Bangkok during April-May 2010. He tied ribbons to a signpost in remembrance of those who were killed, while some of those with him carried photographs of the violence.



*Sombat Boonngammanong, Amornwan Charoenkij & friend (Source-Prachatai)*

In response, a court issued an order for his detention under the Emergency Decree. Because he could not be detained at an ordinary detention facility under the terms of decree, he was taken to the Border Patrol Police 1st Region Command Office in Pathumthani province. On June 29, Sombat filed a motion against his detention, requesting his release on the grounds that his detention was in violation of his rights to freedom of expression and peaceful gathering, as provided for in the 2007 constitution and international law. Although the court allowed the motion, on July 2 it ordered that Sombat be kept in custody for another seven days, stating that he had violated the terms of the decree prohibiting gatherings of more than five persons. Finally, on July 9, Sombat was released from detention. At this time he was formally charged with violating the Emergency Decree by assembling in a group of more than five people. At time of writing, the criminal case is pending against him.

Meanwhile, on 16 July 2010, five students in Chiang Rai province (four from university, and one from high school) walked around the market, the clock tower, and the entrance to the provincial hall carrying signs criticising the Emergency Decree, reading, "I saw people killed at Ratchaprasong." On July 20, two participants, Chiang Rai University Rajabhat students Kittipong Nakakade, age 24, and Nitimethapon Muangmulkuldee, 23, as well as the high school student (name withheld), 16, were summoned and interrogated by the police.

On the evening of the protest, Pol. Lt. Col. Banyat Thamthong, Acting Deputy Provincial Police Commander of Chiang Rai, called the high school student's mother to ask for her husband's telephone number. After the mother hung up the telephone, three men appeared at her front door and identified themselves as plainclothes police. They asked her son who had persuaded him to join the protest and looked at her son's computer. Although they asked her and her son to come with them to the police station, she refused and requested that they return with an official summons. Then, in the same evening, the police lieutenant colonel came to the house with a woman and they also searched her son's computer.

On the morning of 19 July 2010, police returned to the house with a summons and a search warrant. They took photos of the high school student's bedroom and seized his notebook computer. The mother was instructed to bring her son to the police station on July 20 at 10am. She did so, and her son was then ordered to report to the Juvenile Observation and Protection Centre on 21 July 2010. Under law, the centre is required to be involved in cases involving minors under the age of 18.

On July 21 and 30, the high school student reported to the centre for questioning. He was asked about his family and his parents' income. He was asked about his friends and behaviour, including whether he had ever been arrested for a criminal offence, whether he drinks and smokes, whether he had modified his motorcycle, how many close friends he has, and whether he goes out late at night. In addition, he was also again asked why he joined the protest on 16 July, and advised to confess to obtain leniency from the court.

The high school student was ordered to return to the centre for a psychological examination on 2 August 2010. The examination took over three hours, and included answering questions and drawing and matching pictures. At the conclusion, he was instructed to report for psychotherapy for two days on 16 and 17 August 2010. This order to report for psychotherapy was made before the test results were interpreted fully. At this time, the high school student felt concerned that the timing of the psychotherapy would cause him to miss additional days of school, as he had already missed many days of school due to the interrogation and examination. The order was subsequently revoked after the case received a high level of attention. What is striking about the case of Sombat Boonngammanong and the harassment and intimidation experienced by the high school student in Chiang Rai is that mourning the loss of life and calling for accountability in the wake of the violence in April-May 2010 was at the centre of their actions, which have come to be seen as dangerously dissident.

As of September 2010, more than 200 people were officially still being detained in connection with the protests—compared to an official figure of over 400 in June—with most still being under investigation and scattered across prisons throughout the country. Many, perhaps most, were poor persons who received no legal advice and had allegedly been threatened, coerced and tortured to confess to a variety of crimes. Some were convicted on the basis of concocted evidence. Those convicted in summary trials had mostly not sought to appeal or had not known how to do so.

By way of another outlandish example that speaks to the psychology of the emergent internal security state, persons selling flip-flops bearing the image of the premier, Abhisit Vejjajiva, have also been charged with offences under the state of emergency. According to Prachatai, on 3 October 2010, police arrested Amornwan Charoenkij, 42, for an offence under Section 9(3) of the Emergency Decree for selling such flip-flops, which are intended to be derogatory, as in wearing them the user is walking on the face of the prime minister, who obtained his position through a series of judicial coups under the regressive 2007 Constitution of Thailand, as discussed in the Asian Human Rights Commission's 2009 annual report.

In fact, the flip-flops were imitative of earlier ones made by opponents of the former premier, Thaksin Shinawatra, whose face also emblazoned footwear peddled by opponents of his government. But whereas those flip-flops did not attract legal sanction, in a sign of the continued double standards in application of law for groups of protestors of different political persuasions, Amornwan was reportedly charged with distorting facts about the killings in May, and for offending traditional Thai morals with the flip-flops. According to Pol. Maj. Col. Chakkraphan Thupatemi of the Ayutthaya Police Station, the flip-flops implied that the prime minister and deputy had somehow been responsible for deaths during the violence—which is in fact the case as they are the persons responsible for the imposition of the state of emergency, which the prime minister signed into effect—and that selling the flip flops amounted to an act of dissemination of distorted facts and immoral conduct under the emergency decree. Thereafter, another three persons were reportedly arrested for selling similar flip-flops in Chiang Rai, among them one of the five students whose arrest is described above.

### *Chronology of the Emergency Decree 2010*

7 April 2010: the government of Thailand imposed a state of emergency on all or part of 5 provinces under the Emergency Decree BE 2548 (2005), in response to protests. They were Bangkok, Nonthaburi, 6 districts in Samut Prakan, 5 districts in Pathum Thani, 1 district in Nakhon Pathom and 4 districts in Ayutthaya.

13 May 2010: the government extended the state of emergency for the entire area of the 5 provinces above and for 12 other provinces. The total 17 provinces were Bangkok, Nonthaburi, Samut Prakan, Pathum Thani, Nakhon Pathom, Ayutthaya, Chon Buri, Chiang Mai, Chiang Rai, Lampang, Nakhon Sawan, Nan, Khon Kaen, Udon Thani, Chaiyaphum, Nakhon Ratchasima and Si Sa Ket.

16 May 2010: the government further extended the state of emergency to another 5 provinces. These were Ubon Ratchathani, Maha Sarakham, Roi Et, Nong Bua Lamphu and Sakon Nakhon.

19 May 2010: the government again extended the state of emergency to another 2 provinces. These were Kalasin and Mukdahan.

7 July 2010: under the Emergency Decree, the declaration of a state of emergency must be renewed every 3 months. Therefore, the government renewed the decree for another 3 months in 19 of the above provinces, not renewing it in Nan, Kalasin, Si Sa Ket, Nakhon Pathom and Nakhon Sawan.

20 July 2010: the government revoked the decree in another 3 provinces. These were Lampang, Roi Et and Sakon Nakhon.

29 July 2010: the government revoked the decree in another 6 provinces. These were Ayutthaya, Nong Bua Lamphu, Chon Buri, Mukdahan, Maha Sarakham and Chaiyaphum.

16 August 2010: the government revoked the decree in another 3 provinces. These were Chiang Mai, Chiang Rai and Ubon Ratchathani.

1 October 2010: the government revoked the decree in another 3 provinces. These were Udon Thani, Khon Kaen and Nakhon Ratchasima.

At time of writing a state of emergency remains in force in 4 provinces including Bangkok and 3 neighbouring provinces: Nonthaburi, Pathum Thani and Samut Prakarn.

[Source: <http://thailand.ahrchk.net/emergency2010/>]



## International law and international inaction

The arbitrary nature of interrogations, arrests, detentions and charges under the emergency regulations has raised serious concerns about the risk of denial of liberty and abuse of state power in Thailand and point to the likelihood of further grave violations of human rights under the cover of the Emergency Decree and related analogous state security provisions in the coming years. The orders, like those to the police during the war on drugs and those in the context of counterinsurgency in the south of the country, placed officials outside of the ordinary legal system, denying citizens opportunities to question the circumstances of their detention and interrogation and thereby denying them means of redress in accordance with article 2 of the International Covenant on Civil and Political Rights (ICCPR).

The probability of such abuses during a state of emergency is something to which the UN Working Group on Arbitrary Detention has pointed out previously, warning that the rights under the Covenant can be greatly endangered during states of emergency (A/HRC/7/4, 10 January 2008; A/HRC/13/30, 18 January 2010). In particular, it has expressed concern that:

“The continuing tendency towards deprivation of liberty by States abusing states of emergency or derogation, invoking special powers specific to states of emergency without formal declaration, having recourse to military, special, or emergency courts, not observing the principle of proportionality between the severity of the measures taken and the situation concerned, and employing vague definitions of offences allegedly designed to protect State security and combat terrorism” (A/HRC/7/4, para. 59).

The government of Thailand has claimed to be complying with the Covenant in the application of its state of emergency. In an announcement dated 29 June 2010 posted on its website, the Ministry of Foreign Affairs, Thailand responding to an open letter of the Asian Human Rights Commission (AHRC) on the reported shackling of detainees under the state of emergency imposed via the Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) wrote that,

"The fundamental human rights of those arrested during the protests by the United Front for Democracy against Dictatorship (UDD) have been fully respected in accordance with the Thai Constitution and within the parameters of the International Covenant on Civil and Political Rights (ICCPR) and other relevant international human rights instruments to which Thailand is a party. Indeed, the Emergency Decree contains various safeguards that prevent any arbitrary actions by state officers."

This statement is remarkable, because in fact the Emergency Decree was from the start explicitly intended both to guarantee state officers impunity for arbitrary actions, and to place actions under its auspices firmly outside the parameters of the ICCPR.

This has been the opinion not only of the AHRC since the law for issuance of states of emergency was passed in 2005 by Thaksin Shinawatra, but also of United Nations experts who monitor compliance with international law. The UN Human Rights Committee, which

is responsible for reviewing state parties' human rights records in terms of the ICCPR, wrote clearly with regards to the law back in 2005 at time of its introduction that:

"The Committee is concerned that the Emergency Decree on Government Administration in States of Emergency which came into immediate effect on 16 July 2005... 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 [Thailand] 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. In this regard, the Committee draws the attention of the State party to its general comment No. 29..." (CCRP.CO.84, 8 July 2005, para. 13)

General Comment No. 29 interprets aspects of article 4, which allows countries to derogate from their human rights obligations under the Covenant in certain specific circumstances. Among them, it points to the requirement that "the situation must amount to a public emergency which threatens the life of the nation", underscoring that, "Not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation, as required by article 4, paragraph 1" (CCPR/C/21/Rev.1/Add.11, 24 July 2001, para. 2, 3).

The UN Special Rapporteur on the independence of judges and lawyers has explained that for the above criterion to be met, the situation must consist of "an exceptional danger, current or imminent, real and specific, which affects the entire nation to the extent that the measures for restricting or limiting rights allowed under normal circumstances are clearly inadequate" (A/HRC/4/25, 18 January 2007, para. 44). Any departures from the Covenant under a state of emergency must not only be justified by exceptional circumstances but must also be temporary. Once the immediate threat has passed that led to the emergency being imposed, it must be lifted. Again as put by the Special Rapporteur:

"The principle of temporality implies a close connection between the duration of the state of emergency and the circumstance that gave rise to its introduction. Through violation of the principle of temporality states of emergency become permanent in nature, as a result of which the executive holds extraordinary powers" (A/HRC/4/25, para. 43).

It is doubtful that the protests in Bangkok against which the state of emergency was invoked meet any of the criteria set by international law. Certainly they were threatening to the life of the government towards which they were directed; however, there is no evidence that the life of the entire nation was in any way at risk, and therefore the justification for the state of emergency under article 4 was from the beginning at best tenuous. In any event, the government of Thailand has never taken any discernible steps in response to the recommendations of the Human Rights Committee concerning aspects of the Emergency Decree that are not in compliance with the ICCPR, and indeed it has not taken any discernible steps in response to any of the committee's recommendations, as discussed below. Therefore, for the foreign ministry to claim that it is working within the parameters of the ICCPR through the Emergency Decree is patently false.

The committee's recommendation to the government of Thailand concerning article 4 and the Emergency Decree was carefully noted by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, who on 18 July 2006 issued a press release calling on it "to repeal emergency regulations that violate human rights law". Studying the application of the Emergency Decree in the three southernmost provinces, where it has been in effect since 2005—having been renewed more than 20 times at three month intervals, making an utter mockery of the pretence that it might be a temporary measure—the Special Rapporteur noted that the government had "failed to act on previous calls to bring its emergency regulations into compliance with human rights law" and that,

"The emergency decree makes it possible for soldiers and police officers get away with murder... Impunity for violence committed by the security forces has been an ongoing problem in Thailand, but the emergency decree has gone even further and makes impunity look like the official policy."

Again, there has been no discernible response or change in official policy concerning use of the decree since the time that the Special Rapporteur made this statement, and his analysis stands, as does his request to be able to make an official visit to Thailand, which has been pending for over five years.

Despite the persistent and flagrant violation of international law through application of these states of emergency, and notwithstanding the calls of human rights organizations, the UN Human Rights Council has remained mute on the rapidly deteriorating situation of human rights in Thailand. This is due in part to the fact that, perversely, the ambassador of Thailand to the Council took over its presidency in the middle of the year, having described the conflict in his country as "settled" (Bangkok Post, 29 June 2010).

The one-year appointment of Thailand's ambassador in Geneva, Sihasak Phuangketkeow, to head the Council was a victory for diplomacy over the human rights that the Council is supposed to uphold, at precisely the time that the government of Thailand needed to block avenues for criticism of its appalling human rights record from abroad.

The new president of the Council is himself an apologist for the perpetrators of rights abuses. Since taking up the ambassadorship at the Human Rights Council three years ago Sihasak has denied the extent and systemic character of rights abuse in his country, as the AHRC already adverted to in its 2009 annual report. And in 2003, Sihasak was government spokesman during the infamous "war on drugs" of the Thaksin government. Sihasak described the operation, in which thousands of alleged dealers were extrajudicially killed, as being conducted "within a legal framework". The perpetrators of killings during and after the "war" have never been brought to justice: the difficulties associated with bringing such cases against police and other persons involved in the killings are discussed below, with reference to killings in Kalasin Province, on which the AHRC has worked closely for a number of years.

Sihasak was elected to the presidency even though the country that he has represented for the last few years in the Human Rights Council has failed abjectly to fulfill any of its obligations under international human rights treaties. The most indicative of these is the set of recommendations that the Human Rights Committee made in 2005, as discussed above. Five years have passed since the committee made its recommendations. Five years should be sufficient time for any state party to the ICCPR with a serious commitment to its provisions to demonstrate some progress. But 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. Take for instance the recommendations in paragraph 10 of the Committee's findings:

"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. Paragraph 15 is also instructive:

"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 ICCPR. Alleged cases of torture, ill-treatment and deaths in custody are not investigated in a manner that brings any of the perpetrators to court or secures convictions. Nor are cases of threats or violence against human rights defenders, as the Committee urged in paragraph 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: the subject of the next section.

### **No truth, no justice, no protection**

---

While various groups and individuals claim to be searching for the truth and justice for the victims of the political violence in Thailand during 2010, the elusive nature of truth and justice in Thailand even in far simpler cases that have been in plain view for a long time speaks to the enormous obstacles for victims and human rights defenders seeking answers and redress.

The case of abducted human rights lawyer Somchai Neelaphaijit is in a great many respects emblematic of the institutional refusal to entertain seriously claims to truth and justice of victims of gross human rights abuse in Thailand. More than six years after police abducted Somchai and presumably killed him, his family still has obtained neither the truth—despite the fact that many state officials, including the former prime minister, Thaksin, appear to know what happened—nor justice.

On 24 September 2010 the Criminal Court in Bangkok was scheduled to read out the verdict of the Appeal Court in the case against five police officers related to Somchai's disappearance, in which one of the five, Pol. Maj. Ngern Thongsuk, was convicted of coercion—there is no offence for the forcible abduction and disappearance of a person in Thailand—and sentenced to three years' imprisonment. However, Ngern appealed the sentence and obtained bail. In the meantime, on 19 September 2008 he mysteriously disappeared in an accident; his family has claimed that he is dead, but human rights defenders familiar with the case suspect that he may have faked his death and with the assistance of other police has changed his identity and gone into hiding, since his body has never been recovered.

As two years had passed since the convicted police officer's purported accident, just days before the Criminal Court was due to read the appeal court verdict the family lodged an application for the officer to be declared legally dead. When Ngern's lawyer came to the court, he then requested that the court remove Ngern from the list of defendants on the ground that he was no longer alive. Consequently, the court failed to read the verdict as scheduled, instead referring the matter back to the Appeal Court for its consideration.

The Department of Special Investigation (DSI), Ministry of Justice has meanwhile failed to make any further progress into the case of Somchai's disappearance, or the alleged police torture of his clients, Mr Makata Harong, Mr Sukree Maming, Mr Manasae Mama, Mr Suderueman Malae and Mr Abdulloh Abukaree. Indeed, the plight of these five men is indicative of the extent to which the criminal justice system works against the interests of

victims of gross human rights abuse, even when giving the pretence of the contrary. Of the five, Sukree is still under detention charged with attempted murder, as he awaits a Supreme Court decision on his case. Another, Abdulloh, had been under the DSI's witness protection programme, but when he returned to his home in Narathiwat Province he too was abducted, and he has not been seen since 11 December 2009. The lives of the others have all been deeply and irrevocably affected by the failure of the state to resolve the case of Somchai, or to bring their torturers to justice.

Although the DSI presented an investigation report on their alleged torture to the Office of the National Counter Corruption Commission (NCCC), which subsequently called for more than 10 police officers to be investigated, instead of action being taken against the police, one of the remaining victims has instead himself been charged with making a false statement and is facing criminal charges. Pol. Maj. Gen. Chakthip Chaijinda lodged a charge against Suderueman for allegedly giving false information, but the Criminal Court rejected it. Now another case has been lodged and accepted, this time from Pol. Gen. Panupong Singhara na Ayutthaya, who in October 2010 was promoted to the post of deputy police commander for the entire Royal Thai Police. According to Suderueman, both Pol. Gen. Panupong and Pol. Gen. Chaktip were among the group who tortured him and the other four victims.

As commissioner of Police Region 5, Pol. Gen. Panupong in 2005 defended his officers against allegations that three detainees in a police station in Lamphun had been murdered rather than having simultaneously committed suicide by hanging themselves, as the police insisted. Having successfully covered up the crimes of police murderers, he is now doing the same for police torturers—among them allegedly himself—going after Somchai's clients apparently in order to further undermine the case against the police over the lawyer's disappearance, to discredit the legal process, and further threaten and psychologically traumatize the victim. As a result of these developments, Angkhana Neelaphajit, wife of Somchai and head of the Justice for Peace Foundation, submitted a letter to Mr. Wicha Mahakhum of the NCCC to request the NCCC not to send the testimony of the defendants contained in the investigation report to the plaintiffs, as requested, since to do so would pose a further threat to their already jeopardized security.



*Angkhana Neelaphajit*

The case of Somchai Neelaphajit and his clients is just one instance of how persons who have attempted to challenge the impunity of the police in Thailand have themselves ended up exposed and threatened. In every case where ordinary citizens and residents of Thailand have taken on the police that the AHRC has documented to date, in whatever part of the country, and irrespective of other factors, the police have escaped culpability and the victims have themselves been made to pay the price for their demands for truth and justice.

The cases of alleged forced disappearances and extrajudicial killings in the northeastern province of Kalasin during and after the so-called "war in drugs" in 2003 are indicative. Out of at least 28 alleged victims of police killings in this period, so far only the case of Mr. Kiattisak Thitboonkrong

has reached court, thanks to the tireless efforts of relatives and supporters and due to the presence of an eyewitness who could verify that police denials of responsibility contradicted the facts on the night of his disappearance.



*Kiettisak Thitboonkrong*

The six defendants in this case, Pol. Snr. Sgt. Maj. Angkarn Kammoonna, Pol. Snr. Sgt. Maj. Sutthinant Noenting, Pol. Snr. Sgt. Maj. Phansilp Uppanant, Pol. Lt. Col. Samphao Indee, Pol. Col. Montree Sriboonloue, and Pol. Lt. Col. Sumitr Nanthasathit, have been released on bail awaiting the outcome of the trial, and both the relatives and eyewitness have been subject to continuous threats, and the latter is under protection. Meanwhile, observers of the

trial process have complained that the prosecutor has failed to undertake responsibilities properly. They cite his not knowing which witnesses were called to appear on a particular day and evidently not having fully read the case briefs or having prepared arguments adequately as examples of his poor performance. The accused also have manipulated the court process without criticism or sanction by the judge: for example, the eyewitness had identified Pol. Snr. Sgt. Maj. Angkarn as present in the police station when Kiettisak disappeared. On the day of her giving testimony, a court monitor for the AHRC observed that the accused officer came to the court in a black jacket and sat behind the eyewitness, making sure that she had seen him there. He then switched clothes and location with another man, and when the witness was asked to identify him in court she promptly turned and pointed to the other man who was wearing the jacket and sitting in the same place that the accused officer had been located.

Such behaviour by police in court is aimed at undermining the credibility of the prosecution case against them, but the effect it has is also to undermine the credibility of the judicial process itself, since it becomes clear to everyone concerned that the police can run the show even in the courtroom, and without receiving so much as a warning from judicial officers. Other high profile cases where the capacity of the police to obstruct a reluctant judiciary, usually with the complicity of the prosecution, include the case of Imam Yapa Kaseng, who died in a police vehicle parked at an army compound in March 2009, and the Krue Se and Tak Bai killings of 2004. Each of these cases has languished with the prosecutors' office after flawed coronial inquiries conducted at provincial courts.

In the case of Imam Yapa, the Narathiwat Provincial Court on 2 September 2010 concluded regarding the criminal case that his wife brought against five army personnel and a policeman responsible for the torture and death in custody of her husband on the basis that they were acting in accordance with regulations and because so far as the soldiers were concerned the matter would have to go to a military court; however, only military officials, not private citizens, can initiate cases in a military court. Imam Yapa's wife is appealing the verdict.

Meanwhile, according to sources of the AHRC, the prosecutor has reportedly recommended that no charges be lodged against any officials over the deaths of 85 men during and after the protests outside the Tak Bai police station—78 in army custody—on the grounds that there is insufficient evidence to hold any one official culpable. This is despite the literally thousands of witnesses that could be called to testify, including over a thousand survivors and hundreds of state officers, and the existence of extensive video footage of the events, which clearly shows officials on the scene shooting, assaulting detainees, and forcing arrested men to lie face down with arms tied behind their backs first on the ground and then in the trucks in which they were transported to an army camp in another province, in which the 78 suffocated and died. The inevitable conclusion to be reached from all of this is that, in a case where the state officers do not actually want to investigate anything then of course there is no evidence to be collected or brought to court.

As the state has failed to discharge its responsibilities and bring anyone to justice for this act of extraordinary violence, relatives of survivors of Tak Bai, among others, have sought the help of the National Human Rights Commission (NHRC) of Thailand, which under the 2007 Constitution has the power to bring cases directly to court. The AHRC has learned that a complaint to the NHRC from the Tak Bai relatives is one among dozens that is languishing in sub-committees of the commission, awaiting action. However, there are few causes for optimism or for expectation of action any time soon, since the commission comprises not of human rights defenders but apologists of human rights violators, of elite anti-human rights sections of the society in Thailand, and of at least one named human rights violator, as discussed further in the next section.

### When will the UN downgrade the NHRC?

---

Since the time that the new National Human Rights Commission was established under the 2007 Constitution of Thailand in 2009, the Asian Human Rights Commission has called for its international standing to be downgraded and for its removal from participation in United Nations forums on grounds that it no longer complies with the minimum standards for national human rights institutions under the Paris Principles, whether in terms of process of selection of the commissioners or their composition. 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 track record of advocacy and promotion of human rights, and only one has any credentials to suggest himself to the body.

It is therefore not surprising that the NHRC has failed to play a meaningful role to address any of the serious, persistent and entrenched obstacles to the enjoyment of human rights in Thailand, let alone any of the serious problems that it faced as a consequence of political violence in 2010. Whereas a functioning national human rights institution might have been expected to intervene to a maximum possible extent in the events of April and May, the abject failure of the extant commission to play any kind of meaningful role in these events speaks to what can only be charitably described as its irrelevance to the situation of human rights in Thailand. In fact, the only notable contribution of the NHRC at the time was for one commissioner to make a public statement to the effect that owners of businesses and other persons who had suffered losses due to the destruction of property could submit complaints to the NHRC and the commission would assist them to obtain compensation. Persons without property whose lives were lost or rights otherwise grossly violated in the



course of the violence and subsequent crackdown on anti-government protestors were apparently not within the commission's narrow range of vision; nor do they appear to have fallen within it at any time since.

The role of the NHRC as an agency to trivialize rather than uphold human rights in Thailand was clearly illustrated in October 2010 in the response of one commissioner to the flip flops case brought under the state of emergency which has been described above. According to a report on Prachatai, National Human Rights Commissioner Paiboon Varahapaitoon said that by putting the face of the prime minister on the flip flops, the manufacturers and vendors had violated his human dignity as guaranteed under the constitution. Therefore, the former judicial bureaucrat and drafter of the regressive 2007 Constitution said it was right for the case to go to court. Paiboon has not, to the knowledge of the AHRC, made any interventions concerning the rights of the victims of political violence in 2010, the fundamental civil rights of the vendor that have been violated under the absurd and nebulous provisions of the Emergency Decree, or for that matter made any intervention of any importance on any matter of human rights in his country. But in this he is merely representing the elite-centred, anti-human rights and anti-poor perspective of his commission as a whole, and reflecting its dysfunctional organizational culture, which is now completely dominated by bureaucrats, police and other persons aligned to the interests of state agents and agencies, rather than the public interests that the commission is supposed to represent.

In its voluntary but empty pledges to the UN Human Rights Council during its campaign for election to the council in 2010, the government of Thailand stated in paragraph 4(a) with regards to the NHRC that,

“In order to strengthen the Commission's work, the 2007 Constitution has given the Commission additional mandates for the protection of human rights. These are the power to submit cases to the Constitutional Court and the Administrative Court when it is found that the provisions of any law, rule, order or administrative act are detrimental to human rights, and the power to bring cases to the Court of Justice on behalf of victims of human rights violations.”

The statement is correct, and yet also it is a precise illustration of how government commitments to international human rights bodies are empty of substance, since at time of writing only a single case out of the hundreds of complaints that the commission is know to have received has been submitted to the Administrative Court. From observance of the human rights situation in Thailand during the last few years it might be presumed that the commission would be concerned to submit as its first case one on an important and pressing human rights issue, such as the hundreds of unaddressed extrajudicial killings during the “war on drugs” or the violence in the south. Yet the case that the commission took as its flagship relates not to any of these topics but to the petition of a student disqualified from sitting a medical exam due to incomplete application papers.

Although this case might be one of special concern to the student, it is hard to see how it fits with the criterion that the chairwoman of the commission has, according to AHRC sources, set for the consideration of cases to go to court: that they be of special relevance to the human rights situation of the country as a whole. It also again throws up questions about the NHRC's priorities, given that there are at least 20 cases of serious miscarriages of justice reportedly pending with the subcommittee on justice issues, none of which is known to have proceeded to the stage of investigation or report-making, let alone to the point that it might get submitted to court. The inference that human rights defenders and others concerned with human rights in Thailand can but draw is that the student whose case the

NHRC has chosen to champion is a person with rights to protect, whereas the flip flop vendor, the victims of torture who are now being accused of lying, the victims of extrajudicial killings in Kalasin and countless others in Thailand whose rights have been grossly and flagrantly violated are not.

The UN Human Rights Committee in its 2005 findings cited above stated in paragraph 9 that:

"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)."

Despite these observations and despite the National Human Rights Commission's persistent non-compliance with international standards, at the time of writing the United Nations had not yet downgraded the NHRC of Thailand and removed it from an active role in UN bodies. It is difficult for the Asian Human Rights Commission to ascertain as to why it has so far failed to take this step, for the NHRC is not only an embarrassment to the people of Thailand but for as long as it is entitled to participate in United Nations forums a blight on the international human rights system as well.

### Defence of the realm through elimination of middle ground

As the political situation in Thailand has become more polarized, not only have state agencies pursued persons perceived as threats to the established order but also persons occupying the middle ground, ultimately with the effect that any middle ground is itself being eliminated. Independent voices and actors have also been targeted in increasingly frequent, increasingly cynical and increasingly ridiculous criminal actions that are having the effect of greatly reducing the opportunities for sensible and informed debate on the serious problems that the country is facing, as well as pushing the judicial system further and further into a system for the pursuit of blatant political ends through superficially legal means.

Almost immediately after the state of emergency came into effect on April 7, the authorities responsible for its enforcement issued orders to block and shut down some 36 websites. Most belonged to or were closely aligned with the anti-government protestors, but among them were the independent news and commentary sites Prachatai and Fah Diew Kan (Same Sky), and its affiliate. An attempt by Prachatai to launch a legal challenge to the block of its site and claim damages was thrown out of court without even a single witness being examined on the ground that the block was in accordance with the ample terms of the Emergency Decree. At time of writing, some of these sites are partly or fully operating, or are operating on mirror sites. Some can be accessed outside Thailand, but not in the country. Persons in Thailand attempting to access not only the main sites of these groups but also archived contents on third party sites are met with a message indicating that the contents are informed that access to the information at the address has "temporarily ceased" under the Emergency Decree.

**การเข้าถึงข้อมูลดังกล่าวนี้ ถูกระงับเป็นการชั่วคราว**

โดยอาศัยอำนาจตามพระราชกำหนดการบริหารราชการ ในสถานการณ์ฉุกเฉิน พ.ศ. ๒๕๕๘  
ตามคำสั่งของศูนย์อำนวยการแก้ไขสถานการณ์ฉุกเฉิน

**An access to such information has been temporarily ceased**

due to the order of the Centre for the Resolution of the Emergency Situation (CRES)  
under the authority of emergency decree B.E 2548 (A.D. 2005).

*Message posted on websites blocked under the Emergency Decree*

As the AHRC wrote in its 2009 report, the director of Prachatai, Chiranuch Premchaiporn, has been made the subject of a series of criminal cases under the Computer Crimes Act and also for lese-majesty under the Criminal Code. On the afternoon of 24 September 2010, immigration police at Suvarnabhumi Airport suddenly detained Chiranuch, who was just returning to Thailand from a conference on Internet freedom. After being detained, she learned that she was to be taken to Khon Kaen province, in the northeastern part of Thailand, in response to a warrant issued by police there. However, the arresting officers declined to tell her the nature of the charges against her. After being driven to Khon Kaen, interrogated and formally charged, she learned of the charges and was released on bail. She must report back at the same police station monthly. Her trial will begin in February 2011 and she faces a possible total sentence of 80 years' imprisonment. Meanwhile, Prachatai has been forced to shut down its web chat board to avoid possible further charges against its staff or persons using the site.



The lese-majesty charges against Chiranuch were made not over anything that she herself did but for her failure to remove comments that were posted to the site that she manages. These comments, which the AHRC has seen, are not of a violent or threatening manner. What appears to be the crime of the author, rather, is that he or she writes about the institution of the monarchy and specific individuals within the institution in an informal and intimate fashion. Using slang words to refer to the institution as well as specific individuals within it, and coarse words to describe their actions, the author of the comments questions the forms of power exercised by and involvement in politics of the institution. Rather than preserving the distance and untouchable hierarchy between the ordinary citizen and the institution, the author writes about the members of the institution as if they too are ordinary, and subject to observation

and criticism. That she has been singled out because of the character of the website has all along been obvious, and even more so given that Internet service providers hosting sites with allegedly anti-monarchy contents—which have increased dramatically in number in recent times—have not also faced charges but have been asked to cooperate with the government. On the other hand, in a surreal extension of the same principle used to charge Chiranuch and a further sign of the resurgent internal security state, Meechai Ruechupan, an ultra-conservative senior lawyer who has been close to successive military regimes in Thailand and was among the drafters of the regressive 2007 Constitution, reportedly recently told journalists that a petrol station owner who knowing about anti-monarchy graffiti in his toilet failed to remove it could also plausibly be prosecuted for lese-majesty.

This last story is striking, since in its voluntary commitments to the Human Rights Council the government of Thailand acknowledged under its point 10 that there had been “instances when the lèse-majesté law might have been too liberally interpreted and abused by individuals” but added that a “review process is also underway to study aspects that should be improved and the best way to enforce the lèse majesté law with fairness”. The problem is, of course, that the lese-majesty law is not a law that has been designed to be enforced with fairness. It is not a fair law. In fact, it is a law that has been designed not to be enforced at all, but to frighten people from saying or doing anything that would require its enforcement. In the current highly conflicted political situation in Thailand this is untenable, and consequently not only is the law being used but used with increasing frequency, including, for instance, in at least one case concerning alleged lese-majesty through the use of messaging on a mobile phone.

The case of Chiranuch and others like it aimed at silencing independent voices in Thailand is another example of how the government of the country with an ambassador currently holding the UN Human Rights Council presidency has not only ignored but gone directly against the advices of the Human Rights Committee in 2005, in this instance in paragraph 18 of its report, in which the committee wrote that

"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."

However, it is not only through attacks on online media and other channels for communication and communicators whom the state finds problematic that the middle ground is being eliminated, but through the pursuit of equally ridiculous criminal cases—given the context in which they are being prosecuted—against practically anybody who is either not cheerleading for the incumbent government or staying silent.

One example of such a case is in the criminal prosecution of 10 civil society activists who on 12 December 2007 climbed the fence of parliament when a military-appointed legislature was in its final hours, aiming to pass an odious Internal Security Act under cover of an interim undemocratic constitution. Whereas the leaders of crowds of persons who barricaded themselves into Government House for three months and then the international airport for a week during 2008 in protest against an elected civilian government—resulting in massive destruction of property and deaths and injuries—have not been brought to court to face charges for their actions, this group of 10 persons who briefly entered the parliamentary premises to protest the authoritarian actions of an unelected army-backed assembly—causing no damage to public property nor injury to any person—are being tried for a package of alleged offences. The trial of the 10, which opened on 2 November 2010, includes allegations that despite the entirely peaceful nature of their protest they acted to

“bring about a change in the laws of the country or the government by the use of force or violence” and sought “to raise unrest and disaffection amongst the people in a manner likely to cause disturbance in the country”. The offence carries a penalty of seven years’ imprisonment.

Thus, in today’s resurgent internal security state of Thailand a peaceful protest from the middle ground may land the protestor in jail for at least seven years, and the establishing of a website for the voicing of independent opinion can risk the site director half a century of prison time. But to abduct and kill a human rights defender carries the prospect of no more than a year or two behind bars—if the perpetrator can even be brought to court—and the assault, torture and sharp-shooting in the name of the Kingdom of red-shirted protestors armed with catapults, fireworks, sharpened sticks and smelly fish is an act of bravery, deserving not of punishment but of promotion.