



Submission to the Universal Period Review of Thailand

Submitted by the Justice for Peace Foundation

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This UPR submission does not cover the full range of human rights issues in Thailand. This should not be interpreted to mean that JPF does not prioritize those issues. However, as JPF is aware that other organization have focused in detail on other issues of serious concern such as freedom of expression, torture and security legislation, we have chosen to focus on issues not covered in detail in other submissions due to the five page limit set by OHCHR.

1. **Introduction:** The range and strength of dissenting voices in Thailand is increasing. While the majority choose to use peaceful methods to express their political and social concerns, some, such as insurgent groups in southern Thailand, have chosen a path of violence to express their dissatisfaction with the Thai state. At the basis of some of these movements are genuine experiences of marginalization and discrimination by the highly centralized Thai state. In some cases long standing, genuine grievances are being manipulated by extremists. Different governments of Thailand have responded to some grievances through dialogue and negotiation. However, the more common response particularly since the appointment of the Thaksin Government in 2001, has been the use of draconian national security laws that have allowed all governments, particularly since 2005,¹ and the judiciary to act outside the rule of law and have resulted in host of very serious human rights abuses and denials of fundamental freedoms.

2. **Impunity:** Laws codifying immunity of state officials, a politicized and sometimes weak criminal justice system (including the police, the Department of Special Investigations and the judiciary) and a concerning lack of political will have resulted in immunity for security officials who are directly responsible or bear responsibility through chain of command for serious crimes, including assault (torture) and murder (extrajudicial killings).

3. Various governments of Thailand have responded to protests with **unnecessary and/or excessive force**. Examples of this include the suppression of protests in December 2002 related to the Thai-Malaysian natural gas pipeline and gas separation plant project;² suppression of the protests in Tak bai in October 2004; and the dispersion of “Red Shirt” protesters in April and May 2010. The police and security forces are known to employ excessive force during security operations. Prominent examples include the 2003 war on drugs and the events of 28 April 2004 in southern Thailand (including the Krue Se Mosque killings). Under the Thaksin Government the war on drugs resulted in 2,800 killings in a three month period. To date there have been no prosecutions of security officials for these crimes.

4. **Enforced disappearance** is used in Thailand as an extralegal method by the security forces. The scale of enforced disappearances in Thailand remains unknown but documentation suggests it is an extralegal method frequently used by Thai security forces. Despite ratifying numerous human rights treaties, Thailand has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance. Nor has the Government criminalized the act of enforced disappearance. These legal gaps combined with a failure to prosecute those responsible for enforced disappearances, suggests that past and current government officials are not serious about bringing an end to this crime in Thailand. As a result enforced disappearances continue to take place with impunity.

5. JPF has documented more than 90 cases of enforced disappearance that took place between 1991 and 2010 and expects that there are many more cases. The cases documented by JPF include: Thanong Pho Arn, President of the Labour Congress of Thailand, in 1991; over 30 cases of enforced disappearance that occurred in May 1992 when security forces cracked down on peaceful demonstrators in Bangkok; enforced disappearances during the “war on drugs” under the Thaksin administration in 2003. At least 2,800 people were killed or disappeared, including many from marginalized communities; 34 cases of enforced disappearance in the Southern

¹ In 2005, Prime Minister Thaksin Shinawatra issued Thailand’s Emergency Decree on Government Administration in States of Emergencies (the Emergency Decree) and applied the Decree to the three southernmost provinces of Thailand.

² Peaceful protests were taking place in Hat Yai in regard to the granting of a concession for a large energy project that would likely affect the quality of the environment, health and living conditions of the local people.

Border Provinces of Thailand as a result of the counter insurgency policy of the Thaksin administration in 2002 and continued under subsequent governments; the enforced disappearance of Somchai Neelapaijit, a prominent human rights lawyer who was forcibly disappeared in Bangkok in March 2004; and the enforced disappearance of Mr.Kamon Laosopapan, an anti-corruption activist, in February 2008. Other human rights organisations have documented dozens of additional cases of enforced disappearance in Thailand.

6. In all but one case prosecutions have not taken place and in all cases the whereabouts of the disappeared individual or his/her remains remain unknown.

7. **Arbitrary detention:** Security laws are being used to detain people throughout the country. In assessing Thailand's Emergency Decree and Martial Law in comparison with international human rights law and standards, human rights organisations have repeatedly raised concerns about the application of these laws resulting in arbitrary arrest and detention. More specifically the International Commission of Jurists (ICJ) has raised concerns that the *Martial Law Act*, which allows for detention up to 7 days without a warrant and the Emergency Decree, which allows for detention without a charge for up to 7 days, which can be renewed for up to 30 days, lack the necessary judicial scrutiny and oversight to ensure the rights of detainees are fully protected.

8. During the protests and following the violent dispersion of "Red Shirt" protesters in April and May 2010, more than 400 individuals were arrested,³ some were held without charge under the Emergency Decree in what equated to arbitrary detention and others have been charged with a range of criminal offences, including terrorism, and continue to await trial.⁴ The government has stated that 109 people have been released either without charge or on bail. Following "yellow shirt" protests in late 2008, which resulted in the closure of Bangkok's two international airports the protest leaders were charged with assembling for unlawful purposes. These cases are currently under investigation by the DSI and none of the "yellow shirt" protesters are currently detained. In the south 7,680 villagers have been arrested with only 1,500 having security charges filed against them.⁵ In many cases the charges have been dismissed due to a lack of sufficient evidence. Equally concerning is the extremely slow pace at which the judiciary consider these cases and the limits on granting bail. JPF remains concerned that detentions under the Emergency Decree or Martial Law, in any part of the country could result in arbitrary detention.

9. JPF is particularly concerned about the **detention of children** under security laws. In southern Thailand 151 children were detained under the Emergency Decree/Martial Law between 2005 and 2009 at one of the two major detention facilities in southern Thailand.⁶ No information is available on the other facility or the smaller Special Task Force detention facilities.

10. Evidence of **ill treatment and torture** in detention in Thailand has been repeatedly presented by human rights groups, particularly in regard to detainees held under security laws in

³ The Thai Government has officially stated that 260 people were detained, of which 109 have now been released. The figure of 417 was provided by a non governmental source.

⁴ For example, in the North Eastern region, 11 people in Ubon Ratchathani Province and 19 people in Mukdaharn Province were charged with arson. Twelve people in Mukdaharn Province and 61 people in Udon Thani Province were charged with arson together with trespass. In the Northern region, in Chiangrai province, a total ten people were arrested under Emergency Decree; three were charged with disrupting traffic and six with arson. In Chiang mai Province, five people have been charged with arson.

⁵ Bangkok Post, Opinion Piece by Sanitsuda Ekachai, "Silent deaths in restive South", 17 February 2011.

⁶ Information provided by Southern Border Polices Bureau.

southern Thailand. The increasing number of individuals held under laws that do not have the necessary checks and balances to ensure the rights of detainees is of grave concern.

11. **Human rights defenders:** A wide range of human rights defenders face threats and attacks in Thailand. Thai authorities, particularly security personnel are a major source of threats and attacks on human rights defenders. However, others such as insurgents in southern Thailand and companies also pose a serious threat to human rights defenders.

12. Lawyers, human rights activists and staff of non-government organisations frequently face threats from security officials and in the south from armed insurgents. In March 2004, human rights lawyer Mr Somchai Neelapaijit was disappeared by Thai police. His whereabouts has never been determined and justice has been slow and unsatisfactory. His wife, Angkhana Neelapaijit, who is herself a leading human rights activist, continues to face threats from unknown persons. The office of JPF in southern Thailand has been searched by security officials. The searching and harassment of NGOs and their employees is also a common occurrence for NGOs whose work relates to human rights in Burma. International NGOs face difficulties to register in Thailand, placing them in a precarious situation and stifling their ability to operate freely in Thailand.

13. Women human rights defenders face a higher level of risk, this is particularly true in southern Thailand where culture and Islamic teachings have been interpreted in a way which isolates and highlights women human rights defenders. Individuals attempting to hold accountable businesses and officials in Thailand for corruption, environmental damage and violations of labour rights have been harassed, charged with offences and killed.

14. Past and current governments have failed to respond adequately to the significant risks human rights defenders in Thailand face. This is exacerbated by the limited progress in seeking justice in the majority of cases related to attacks on human rights defenders. The Thai Government has not established any mechanisms for protection of human rights defenders.

15. **Press freedom:** At a time when space for negotiation and discussion within society is greatly needed freedom of expression in Thailand is increasingly stifled. Press freedom has deteriorated significantly, especially within online media. Tens of thousands of URLs have been blocked under the new Computer Crimes Act 2007 and by the Center for the Resolution of Emergency Situations (CRES) under the Emergency Decree. At least one online journalist and one webmaster are being prosecuted under the Computer Crimes Act for offences related to *Les Majeste* and several more await trial. Two foreign journalists were shot dead while trying to report on the protests in Bangkok in May 2010. Over 100 community radio stations linked to groups opposed to the Government have been closed down around the country. Journalists in the south continue to face intimidation and threats both at home and work.

16. While media freedom under the Thaksin Administration was restricted, particularly through the use of law suits against the professional media (newspapers and television stations),⁷ the current practice of restricting freedom of expression is complex and increasingly severe. The application of a specific legal framework to restrict and prosecute journalists is a severely negative development and has resulted in even the most outspoken journalists self-censoring.

⁷ For example, on July 16, 2003, a civil lawsuit was filed against *Thai Post* and Ms. Supinya Klangnarong for 400 million Thai Baht. On March 14, 2006, the Criminal Court dismissed the criminal lawsuit, saying the article in the *Thai Post* was presented in good faith and in the public's best interest. On May 8, 2006, Shin Corporation asked that the civil lawsuit be withdrawn and the civil suit was dropped.

The killing of journalists while they cover the news in Thailand is a development that warrants the gravest concern.

17. **Women** are marginalized within their community in southern Thailand. They face persecution and are discredited when they come out to defend their rights which are compromised by the conservative interpretation of religious code. Malay Muslim women are seriously under-represented in Thailand's democratic system. In addition Malay Muslim women have been affected by the violence in southern Thailand; they are left to be the provider when husbands are detained, disappeared and killed. The usual pressures associated with such situations are exacerbated by the status of such women under the Islamic code. Women are being drawn into the conflict by both sides: the insurgents have begun to recruit women in a variety of roles and women are being armed to protect Buddhist villages. Women are also being detained and charged.⁸ Women in the south also face a variety of human rights concerns experienced by women throughout the world such as trafficking, domestic violence and health issues, including high rates of infant and maternal mortality. Sustainable solutions that empower the women of the south to advocate for their rights are needed. At the national level the Gender Equality Bill that is currently under consideration will allow for discrimination against women when it is grounded in academic or religious reasons or when it is for public good.

18. There are multi-faceted challenges of **protecting children** from the human rights abuses related to armed violence in southern Thailand. The persistence of children's involvement in *Chor Ror Bor* (Government-established village defence volunteer units), as well as their continued involvement in armed opposition groups highlight the need for the Government to develop and implement comprehensive and coordinated strategies to protect children at the national and provincial levels, to end their recruitment and use by all armed parties

19. JPF is concerned about the human rights impact of violence on the **Thai-Cambodia border**, especially the displacement of civilians. It is essential that both the Thai and Cambodian governments fully respect human rights law. Human rights violations along the border related to the violence should be monitored by independent monitors.

20. **Thailand's commitments to the Human Rights Council:** In 2010, Thailand was elected for a three year term to the Human Rights Council. At the time of the election the Foreign Minister committed to, among other things, democratization and good governance, the promotion of an open democratic rights-based society by ensuring the rule of law, justice, non-discrimination, elimination of impunity and abuse of power.⁹ To date, the current Thai Government has failed to meet this commitment to the members of the Human Rights Council. With Thailand's election as President of the Human Rights Council it is increasingly important that Thailand be held to the commitments it made to ensure its place on the Council.

⁸ Police Interviewing Center, Southern Border Polices Bureau reported that between 7 September 2005 and 16 October 2010, 62 women suspected of association with the insurgency movement in Yala, Pattani and Narathiwat were detained at Protection Peace Center, Southern Border Polices Bureau in Yala. Criminal arrest warrants have been issued for 43 women with 27 arrested, 15 not yet arrested and one had shot dead. Emergency Decree warrants have been issued for 90 women with 70 arrested, 19 not yet arrested and one shot dead.

⁹ Statement by the Thai Foreign Minister Kasit Piromya, February 2010, www.mfa.go.th/internet/audio/FM%20remarks.pdf

21. The Periodic Review of Thailand should recommend the Thai Government

- Demonstrate commitment to respecting international human rights law by ratifying the Disappearances Convention. Pass legislation criminalizing ill-treatment, torture and enforced disappearance.
- Invite the following United Nations special procedures to visit over an appropriate time period: Special Rapporteur on freedom of expression; Working Group on enforced and involuntary disappearances; Working Group on arbitrary detention (requested); Special Rapporteur on extrajudicial, summary or arbitrary executions (requested); Special Representative on human rights defenders (requested); and set an example by being among the first countries to extend an invitation to the new Special Rapporteur on peaceful assembly.
- Amend all laws to ensure compliance with Thailand's international human rights obligations, specifically the Emergency Decree, the Martial Law, the Internal Security Act, the Computer Crimes Act and laws related to Lese Majeste.
- Apply the UN Guidelines on Human Rights Defenders to ensure the protection of human rights defenders in Thailand. Where evidence is available prosecute individuals responsible for violations against human rights defenders.
- Establish a systematic national mechanisms to provide the full range of reparations to families of victims of enforced disappearance.
- Ensure all allegations of human rights abuses are transparently and thoroughly investigated and where evidence is available alleged perpetrators are prosecuted in criminal courts in line with international fair trial standards.
- Commitment to respect the rights of journalists, especially their right to life. Issuing of direct orders to all security personnel that human rights defenders, including journalists must not be attacked when they are monitoring protests, or any other time.
- Make public information regarding cases related to Computer Crime Act and *Lese Majeste* laws.
- Ensure all individuals detained in Thailand are treated in accordance with international standards, especially ensuring all detainees are kept in regular places of detention and have access to judicial scrutiny, habeas corpus, and independent monitoring of detainees and detention facilities on regular basis.
- Give priority to protection of the rights and freedoms of women and children in southern Thailand when designing and implementing policy.
- Ensure that the rights of civilians living in areas near the border with Cambodia are considered as a priority when conducting operations and in the design and implementation of policy related to the border dispute with Cambodia.

22. Recommendations to the international community

- The diplomatic community should raise issues of concern, such as those referred to above with the Thai Government during the Review process.
- The special procedures on freedom of expression; enforced and involuntary disappearances; and the newly established Special Rapporteur on peaceful assembly and association should be encouraged by the Review to request invitations to visit Thailand. Visits by special procedures should be coordinated and timed to reflect the highest priority concerns in the country.
- Relevant special procedures should be encouraged by the Review to continue to closely monitor the situation in Thailand and communicate with the Thai government both privately and publically where necessary and appropriate.