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Public Statement

# Thailand: Covid-19 measures must not be used to violate individuals' human rights

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## **THAILAND: COVID-19 MEASURES MUST NOT BE USED TO VIOLATE INDIVIDUALS' HUMAN RIGHTS**

On 26 May 2020, the Thai government approved the extension of emergency powers under the Emergency Decree on Public Administration in Emergency Situation (2005). The decree has been in place since 26 March 2020 in response to the COVID-19 pandemic, and has been used to restrict movement, peaceful assembly, privacy and freedom of expression, with penalties of imprisonment and/or fines.

As the Thai government reconsiders the exact emergency measures it will take to address the COVID-19 pandemic following a two months' lockdown period, Amnesty International urges the authorities to ensure all restrictions it imposes on the exercise of rights are proportionate and necessary. In addition, it calls on authorities to institute specific measures to protect the rights of marginalised groups who are at heightened risk because they cannot effectively protect themselves during the pandemic; face obstacles in accessing information about the virus transmission and adequate healthcare and services; or lack the capacity to comply with the government's existing measures.

Amnesty International further urges the authorities to lift charges it has imposed on individuals who are being penalized for exercising their right to freedom of expression; stop the arbitrary detention of refugees and migrants; and refrain from using restrictions to target critics with disproportionate punishments based on politically-motivated grounds. While the right to freedom of peaceful assembly can be restricted where doing so is necessary and proportionate to protect public health, those facing charges for assembling in breach of physical distancing measures must never face prison sentences.

## **RIGHTS TO FREEDOM OF EXPRESSION, INFORMATION, PEACEFUL ASSEMBLY, AND CURFEWS**

On 22 May 2020, authorities initiated criminal proceedings against Anurak Jeantawanich, a political activist, and Thossaporn Serirak, an ex-MP of the now defunct Pheu Thai party turned political activist, for holding a peaceful protest at Bangkok Art and Culture Centre on the sixth anniversary of the military-led coup. On 13 May authorities also charged Anurak Jeantawanich for marking the death of a military advisor to demonstrators who in 2010 had called for parliamentary dissolution and general elections. If convicted, they will face up to two years' imprisonment for each offence and a fine of up to 40,000 baht (US\$1,250) under the 2005 Emergency Decree, one of the emergency laws whose provisions have been repeatedly used to censor and undermine freedom of expression

and the media during periods of political unrest.

Other groups – including Democracy Restoration Group, Student Union of Thailand, Popular Student Network for Democracy, Khon Kaen Por Gun Tee (Khon Kaen Enough) and students at Walailak University – also took part in marking the coup anniversary in several locations in Bangkok and throughout Thailand. Authorities closely monitored the demonstrators and took photos of participants' identification documents and a protest vehicle, while attempting to block activities and threatening them with charges under the Emergency Decree, the Land Traffic Act, and the Cleanliness and Orderliness Maintenance Act. Police also briefly detained some activists and confiscated protest signs.

Community-based human rights groups also reported that authorities have harassed and threatened them with charges for planning or taking part in peaceful protests during this period. Among others is the Khon Rak Baan Kerdin Chaiyaphum province's Bamnejdamrong district. On 28 April, about 20 members of the group gathered to read out a statement requesting the government to delay its decision on a mining concession. Local police later arrested and interrogated one of the group's leaders for allegedly violating the Emergency Decree's Regulations and the Communicable Diseases Act.

On 14 May, the public prosecutor indicted 42-year old artist Danai Ussama, who was arrested in March 2020 after writing on Facebook that he had not seen any health checks at Suvarnabhumi airport when returning by air to Thailand, and posting an old picture of the airport. If convicted, he will face up to five years' imprisonment under the Computer Crime Act and/or a fine of up to 100,000 Baht (US \$3,128). Officials have further warned that they will not only prosecute individuals who propagate "false news," but also those who share it, which may lead to the punishment of individuals for exercising their right to freedom of expression in good faith on online platforms, one of the main channels for accessing information about the pandemic during quarantine.

Amnesty International urges the authorities not to penalize individuals for expressing their opinions online in good faith, and ensure that information on the pandemic is made available and easily accessible to the public –including best health practices and government policies on COVID-19 –so that they can protect themselves from virus. The authorities must guarantee that restrictions are put in place for the sole purpose of minimizing virus transmission, rather than to target activists with disproportionate punishments because of their criticism of the government. Impediments to people being able to protest collectively in public as a result of lockdown measures must be a last resort based on a compelling need. Protestors have taken precautions by putting in place measures to prevent the transmission during the gatherings such as physical distancing and mask wearing. Authorities have not consistently allowed groups to carry out peaceful protests. Lockdown measures affecting public protests must be applied consistently in comparison to other movements and activities which people are still allowed to carry on with, giving due weight to the importance of the right to freedom of peaceful assembly. Amnesty International are concerned that authorities in Thailand are disproportionately clamping down on peaceful protests.

We also raise urgent concerns about the authorities' treatment of homeless individuals and the government's inadequate information provision to groups who are facing heightened risk during the pandemic. In April, at least two homeless people were separately charged, and given suspended prison sentences and a fine of 500 and 3,000 Thai Baht (US\$15 and 100) respectively, for violating the 10 pm to 4 am curfew under Regulation 2 of the Emergency Decree (put in place on 3 April and shortened to 11 pm to 4 am on 17 May).

Amnesty International urges the Thai government to adhere to the guidance note of the Special Rapporteur on the Right to Adequate Housing, which states that all governments must "ensure that

homeless people are not criminalized, fined or punished in the enforcement of curfew or containment measures.”

## **ASYLUM SEEKERS, REFUGEES AND MIGRANTS**

COVID-19 infections have been reported among migrant men, women and children in detention, including at least 65 individuals in Songkhla Immigration Detention Centre, southern Thailand. On 20 May 2020, authorities also reportedly failed to grant the UN Refugee Agency (UNHCR) access to screen a group of 12 Rohingya in Mae Sot Immigration Detention Centre. Amnesty International has made long-standing recommendations to the Thai authorities to end the arbitrary and sometimes indefinite detention of asylum seekers, refugees and migrants in Thailand. Under international human rights law and international refugee law, migrants and asylum seekers must benefit from a legal presumption of the right to liberty and security; any deprivation of liberty must be non-arbitrary and as minimally restrictive as possible. The Thai government must ensure that individuals are not criminalized, detained or otherwise punished solely for their method of arrival in Thailand. They should allow all individuals in need of protection access to UNHCR and screening procedures to establish their protection needs.

During the COVID-19 pandemic - when migrants and asylum seekers' right to health is at heightened risk - authorities must implement measures to protect the rights of migrants and staffs in immigration detention centres, including by either releasing migrants, asylum seekers and refugees, or holding them in alternative conditions that allow for physical distancing. Thailand should provide migrants and asylum seekers with access, free from discrimination, to essential services, care and safety, including adequate healthcare and accommodation with humane living conditions. Detention solely for migration-related reasons cannot be considered necessary or proportionate. The administrative detention of people - Thai or foreign nationals alike - for the purposes of protecting public health must be in strict compliance with the principles of proportionality and necessity. Under the UN Convention on the Law of the Sea (UNCLOS) and the International Convention for the Safety of Life at Sea, Thailand is obliged to provide assistance to those in distress at sea. A number of fishing trawlers carrying as many as 3800 women, men and children asylum seekers - believed to be Rohingya - have reportedly been stranded at sea since late April 2020.

Amnesty International has called on Thailand and neighbouring governments to ensure that they allow boats to land safely, and co-ordinate search and rescue operations to locate and assist boats in distress, in line with regional declarations and international law.

Amnesty International reiterates calls on the government to ensure that refugees and asylum seekers are protected from return to places where they would be at risk of persecution - including by being pushed back to sea - in line with the principle of non-refoulement under customary international law binding on all states.

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- <https://www.amnesty.org/download/Documents/ASA3924032020ENGLISH.pdf>