

THAILAND: International law and the limits of a state of emergency

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The government of Thailand claims to be complying with the International Covenant on Civil and Political Rights in its application of the Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 (2005) in response to the recent protests in Bangkok, which is today, 6 July 2010, coming up for renewal.

The Asian Human Rights Commission has in a previous statement pointed out that in fact the government's rationale for the imposition of the state of emergency does not meet the minimum requirement of the Covenant that the life of the entire nation be in danger, and that certain specific terms of the Emergency Decree are clearly—and in the opinion of the committee that monitors compliance with the treaty—in breach of its provisions (AHRC-STM-139-2010 <<http://www.ahrchk.net/statements/mainfile.php/2010statements/2672/>>).

There is yet another aspect of the current imposition of the Emergency Decree that is in violation of the Covenant, as explained by the United Nations Human Rights Committee:

"A fundamental requirement for any measures derogating from the Covenant, as set forth in article 4, paragraph 1, is that such measures are limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency" (General Comment No. 29, CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 4).

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. As the UN Special Rapporteur on the independence of judges and lawyers explained in his 2007 annual report to the Human Rights Council,

"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, 18 January

2007, para. 43).

According to the government of Thailand, conditions in the country have now largely returned to normal. There are no more protests or violence on the streets of the sort that led to the imposition of the Emergency Decree across 24 provinces in the centre, north and northeast of the country. The Ministry of Foreign Affairs in a statement on its website of 29 June 2010 describes the "Government and Parliament discharging their normal functions" and life as going on as usual in areas under the state of emergency. The only justification that it offers for the continued application of the decree is "to prevent possible violent or unlawful activities".

The justification for continued imposition of a state of emergency to prevent possible further future violence is under international law no justification at all. On the contrary, it is a precipitant of precisely that situation about which the Special Rapporteur warns, in which the principle of temporality is violated to allow for the state of emergency to extend beyond the exigencies of the situation.

Implicit in the preventive pretext is the notion of an indefinite state of emergency. Since the prospect of violence and unlawful activity exists in any society—and especially in one where the legitimacy of electoral processes has collapsed—practically any government can at practically any time conceivably use this excuse to curtail basic human rights, including those under the Covenant.

If the government of Thailand today opts to renew the Emergency Decree then it will not only be doing a grave disservice to the people and institutions of Thailand, but it will also be stepping clearly beyond the limits of the principle of temporality and into further breach of international law. This is a step that once taken will not be easily reversed. It is a step that it must not take.

The Asian Human Rights Commission therefore once again unequivocally calls on the government of Thailand not to renew the Emergency Decree, to release all persons being held under its provisions, and to comply fully and in fact—not merely in rhetorical commitment to principle—with the terms of the International Covenant on Civil and Political Rights in the handling of all cases of persons accused of criminal offences in connection with events of the last few months.