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ICJ expresses deep concern regarding recent political violence in Thailand and stresses the need for an impartial and independent investigation

The International Commission of Jurists (ICJ) expresses deep concern and regrets the violence and associated loss of life in Bangkok on the evening of 10 April 2010. We send our deepest condolences to the families of all those who were killed during these events, and urge all parties and individuals to pursue peaceful solutions to the current political conflict. The ICJ believes that peaceful reconciliation will be best served if all those involved respect the rule of law and comply with international standards, especially those relating to the use of force, full and transparent investigations into alleged human rights violations, and protection of fundamental rights including freedom of expression. In this public statement the ICJ highlights the content of these long-standing and widely accepted international standards.

In particular, the ICJ urges that a prompt, public, independent and impartial investigation is undertaken into the possibility that Thai security forces have engaged in conduct in violation of internationally and domestically protected human rights on 10 April 2010. In addition, a number of private individuals, including those associated with the United Front for Democracy Against Dictatorship ("UDD") have allegedly engaged in human rights abuses. Such an investigation is crucial in light of conflicting reports about which individuals initiated and/or carried out unlawful violent acts, including as part of the clashes on the evening of 10 April 2010 that resulted in the deaths of over 20 persons and the injury of additional hundreds. Failure to carry out a credible investigation in line with international standards and acceptable to all parties may result in deepening the conflict and undermining the legitimacy and democratic principles of the Thai State.

The ICJ welcomes the Royal Thai Government's statements indicating that "it has issued strict guidelines on rules of engagement, on the use of force, in line with international standards; the use of weapons is authorized strictly only for self-defence in a critical situation."¹ The ICJ commends these types of restraints on the use of force as fundamental to ensuring that political conflicts are resolved by democratic and lawful means, and minimizing the possibility that these conflicts will result in human rights violations, violence and civil strife.

The ICJ also welcomes the Royal Thai Government's statement that it has set up an independent investigations committee, and that it "is committed to the judicial process, and is ready to be examined about its operations [on 10 April 2010]." The clashes between security forces and demonstrators on 10 April 2010 during the attempted break-up of the UDD protest in and around the Phan Fa bridge in Bangkok resulted in the loss of life and many serious injuries, as revealed through the journalists' reports, photos and video footage of events available online and through various media outlets. The ICJ considers that it is essential that a prompt, transparent, independent and impartial investigation be undertaken into the use of force by the Thai military and into the violent actions of protestors or others involved in the clashes, including the use of firearms and

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explosive devices by unknown individuals. Thailand's legal obligations require that this investigation adhere to international standards, as described below.

International Standards Relating to Use of Force

One of the most important obligations of any government is to protect the human rights of the people under its jurisdiction, including their right to security.² However, whenever force is used by security forces, there is a heightened risk of violations of a number of rights, including the right to life, the right to security of the person, freedom from torture and cruel, inhuman or degrading treatment, and the right to freedom of peaceful assembly.³ To protect these rights, international standards limit the use of force by authorities in response to both peaceful and non-peaceful situations.

Law enforcement officials must use force only as a last resort and strictly in proportion to the threat posed, which means that the lowest possible level of force must be used to achieve the objective. Force, including force used in crowd control, must also be used in a way that minimises damage or injury.⁴ Where non-lethal force is used, international standards apply not only the types of weapons carried but also the ways in which these weapons may be used, and the rules of engagement applicable to forces controlling crowds. Lethal force may only be used "when strictly unavoidable to protect life."⁵ The Special Rapporteur on Extrajudicial Executions has stated that

*"[t]he fundamental question is of proportionality between the objectively anticipatable likelihood that the use of force will result in death and the comparable anticipatable likelihood that failing to incapacitate the individual would result in the deaths of others."*⁶

Key International Standards on the Use of Force

*United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*⁷

Principle 3. "The ... deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled."

Principle 8. "Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles."

Principle 9. "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

*Code of Conduct for Law Enforcement Officials*⁸

Article 3

"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

International law generally leaves the control and punishment of violence by non-state actors against State security forces to be governed by domestic criminal law, provided that such laws and all enforcement actions comply with internationally recognised human rights law and standards, including the prohibition on arbitrary arrest and detention and the full range of fair trial rights. In this regard, the ICJ highlights Thailand's responsibility to protect the rights of all persons on its territory, and to provide an effective remedy wherever non-state actors violate the human rights of others.

International Standards Relating to Effective Investigations

Every person, without distinction, is entitled to a remedy for the violation of his or her human rights.⁹ The right to an effective remedy entails an obligation for Thailand to investigate allegations of violations "promptly, thoroughly and effectively through independent and impartial bodies".¹⁰ Remedies must be practical and effective; they must provide meaningful access to justice, as well as being prompt and accessible.¹¹ To be effective, investigations must also be capable of leading to the punishment of perpetrators, particularly if the violation constitutes a crime under domestic or international law.

International law recognises that human rights violations may be committed by State agents, by persons acting with the authorisation, acquiescence or complicity of the State. The State also has the obligation to protect against abuses that impair the enjoyment of human rights by non-state actors, such as the UDD. Where such conduct is not imputable to the State,¹² the State's obligation to investigate arises from this legal duty to protect all individuals under its jurisdiction.¹³

The right to an effective remedy encompasses the cessation of the violation and the right to reparation, including monetary or other material compensation; restitution aimed at victims back in situation they were in before the violation; physical, mental and social rehabilitation; the provision of guarantees of non-repetition measures of satisfaction (i.e., non-financial forms of redress for physical or mental suffering, distress, or harm to a person's reputation or dignity), and bringing perpetrators to justice.¹⁴

Where a human rights violation also amounts to a crime under domestic or international law, it is also essential that individual responsibility be ascribed to ensure accountability. In such cases, purely disciplinary or administrative remedies are inadequate (such as internal disciplinary proceedings that halt promotion or result in a transfer of personnel; or, administrative remedies such as the making of findings by independent commissions of inquiry or other bodies). Remedies must be provided by an independent and impartial court of law, "especially when violation of the right to life is alleged."¹⁵ Similarly, international standards on the use of force require an independent review to be undertaken by judicial or prosecutorial authorities whenever firearms are used by law enforcement officials.¹⁶ Identifying the individual perpetrators of human rights violations must be one of the central purposes of any investigation.¹⁷

Investigations into serious human rights violations must also document all relevant evidence. Investigative authorities must have the powers and resources necessary to carry out effective investigations, and must have the power to compel testimony from all those involved.¹⁸ Witnesses, victims and their families also need to be protected from threats and intimidation. In connection with this requirement, any officials suspected of involvement in serious human rights violations should be suspended during the course of the investigation, in accordance with international legal standards.¹⁹ Critically, international standards require that the proceedings of investigations into serious human rights violations be accessible to victims and their families and be made public to the greatest possible extent. The methods and findings of the investigation must be made public promptly upon its conclusion.²⁰

In addition to criminal prosecution and punishment, those found guilty of serious human rights violations should be dismissed from public service.²¹ The United Nations General Assembly has recognised that holding to account individual perpetrators of grave human rights violations is “one of the central elements of any effective remedy for victims of human rights violations and a key factor in ensuring a fair and equitable justice system and, ultimately, reconciliation and stability within a State.”²²

A failure by a State to bring the perpetrators of serious human rights violations before the courts, or a decision to prosecute only some, but not all, of the persons responsible constitutes a violation of international human rights law.²³ The denial of justice to the victims of human rights violations, the restriction or denial of access to the courts, or the failure to conduct investigations and trials in accordance with the international due process standards, as well as the provision of formal amnesties for perpetrators of serious human rights violations, are incompatible with a State’s obligations under the ICCPR and violate victims’ right to a remedy.²⁴ Thus, for example, any invocation of section 17 of the Emergency Decree to shield State forces from accountability in relation to possible wrongdoing would be in violation of Thailand’s international obligations.

Freedom of expression

The Emergency Decree authorizes a “competent official” to enact regulations restricting the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds and the right to freedom of assembly.²⁵ Under section 9(3), the Prime Minister or a competent official may enact regulations:

“(…) to prohibit the publication, distribution or dissemination of letters, print materials or any means of communication containing texts which may instigate fear amongst the people or is intended to distort information which causes misunderstanding of the emergency situation affecting the security of state or public order or public moral both in the area or locality where a State of Emergency has been declared or the whole Kingdom.”

Although the right to freedom of expression can be derogated from during a properly declared state of emergency, any measure of derogation must be strictly required and proportionate to meet a specific threat. Emergency measures must distinguish between information that could threaten national security and the legitimate expression of controversial ideas. Only in highly exceptional cases could a nation’s security be directly threatened by a person’s exercise of the right to freedom of expression. Such a threat would require, at the very least, clearly establishing that the person was able and intended to take actions that directly threaten national security, in particular by inciting the use of violence.²⁶

Section 9 of the Emergency Decree allows the Royal Thai Government to suppress expression that is intended to distort information and that leads to a misunderstanding of the emergency. As the ICJ pointed out in 2005, this vaguely worded power can easily be used to curtail legitimate political and social dissent and media discussion, if in the view of the authorities, it is factually wrong or misleading. Critical debate and controversial perspectives about an emergency situation do not threaten national security. Broad-based media censorship that goes beyond what is strictly necessary and proportionate to address immediate threats of violence will have a chilling effect on the vibrant press in Thailand and may contribute to an increase in conflict and violence rather than a just resolution of disputes.²⁷

Even in times of crisis, freedom of expression and of the media are vital, to allow critical reflection, and proper resolution, of an emergency situation. The ICJ therefore urges the Royal Thai Government to refrain from censoring media outlets in violation of international law, and calls on all parties, including the UDD, to refrain from actions that threaten members of the media or impact on their ability to cover the situation and inform the public.

Conclusions

During emergency situations that threaten the life of the nation, international law allows States to suspend aspects of the application of some human rights in order to restore peace and order²⁸ However, some rights, such as the right to life, may never be subject to derogation in whole or in part.²⁹

Over the last five years, and irrespective of the political party in power at the time, the ICJ has consistently expressed concerns regarding the compliance of the Emergency Decree and Internal Security Act with Thailand's international human rights obligations. In several comprehensive legal reports, the ICJ has raised concerns about the vague and overbroad circumstances under which exceptional powers can be invoked by the Executive branch of government; of the broad powers of arrest and detention and diminished role for judicial oversight; of the extension of civil and criminal immunities to State officials; of the potential for arbitrary curtailment of human rights, in particular rights of freedom of expression and assembly; as well as of the domestic law enforcement role that may be allotted to the military under both pieces of legislation.³⁰ The ICJ has similar concerns regarding the Martial Law Act, which ousts civilian control completely,³¹ and welcomes the Royal Thai Government's assurances that resort to martial law is not necessary.³² In recent years the ICJ has also grown increasingly concerned with the political polarization in Thailand, characterized by the colour-coded conflict between "red shirts" and "yellow shirts", and the inability of successive governments to resolve this conflict according to rule of law principles. The possibility that these non-state actors will turn to violence rather than peaceful means is a serious danger to Thai democracy. To avoid this dangerous outcome, it is essential for the Royal Thai Government to act and be seen to act in a lawful manner consistent with international standards, and for all non-state actors to commit themselves to respecting human rights.

Even in situations that may threaten national or internal security, the Thai authorities must ensure that extraordinary powers do not lead to arbitrary exercise of power or weakening of accountability for either State or non-state actors.³³ By ratifying the ICCPR and other human rights instruments, Thailand has reaffirmed that it will deal with security threats without abandoning the rule of law. It is only by respecting the rule of law that the ongoing and deepening divide in Thai society can be bridged in a manner that will be acceptable to all parties to the conflict and supported by the international community. Only this way can the current crisis result in strengthening the democratic foundations of the Thai State and society rather than a breakdown in security.

The ICJ calls on all branches of the Thai State to act in accordance with their international obligations. Equally, the ICJ calls on all individuals and non-state groups, particularly those associated with the Red Shirts, to ensure that their actions do not impair the enjoyment of human rights by others. The ICJ urges all parties to eschew violence in the resolution of political conflict and cooperate to ensure that a prompt and effective investigation into the events of 10 April is undertaken, followed by effective prosecution of those responsible for unlawful acts and vindication of the rights of victims.

Endnotes

¹ "Live Press Conference by DSG Panitan 11 April 1500 h", online: <http://www.capothai.org/capothai/live-press-conference-by-dsg-panitan-11-april-1500-h> and "Thai Government sets up committee to investigate deaths and asks for evidence of what transpired on 10 April", online: <http://www.capothai.org/capothai/thai-government-sets-up-committee-to-investigate-deaths-and-asks-for-evidence-of-what-transpired-on-10-april>; "Government aims to separate those committing terrorist acts from amongst innocent demonstrators (for web and PR)", <http://www.capothai.org/capothai/government-aims-to-separate-those-committing-terrorist-acts-from-amongst-innocent-demonstrators-for-web-and-pr>.

² International Covenant on Civil and Political Rights, article 2 ["ICCPR"]; Human Rights Committee General Comment 31.

³ These rights are protected in the ICCPR, articles 6, 7, 9 and 21.

⁴ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 13 and 14; Code of Conduct for Law Enforcement Officials, article 3. The Basic Principles on the Use of Force were endorsed by the Human Rights Committee in Concluding Observations on: Cyprus, 1995, UN Doc. CCPR/C/79/Add.39, paragraph 6; United States of America (1995), UN Doc. CCPR/C/79/Add.50, paragraph 32; Portugal (2003), UN Doc. CCPR/Co/78/PRT, paragraph 9; Denmark (1997), UN Doc. CCPR/C/79/Add.68, paragraphs 14, 21.

⁵ *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle 9. See also: Human Rights Committee General Comment 6, paragraph 3; Human Rights Committee, *Suarez de Gurrero v Columbia*, Communication No. 46/1979, 31 March 1982, esp. paragraph 13.2.

⁶ Philip Alston, *Interim Report on the worldwide situation in regard to extrajudicial, summary or arbitrary executions*, Submitted to the General Assembly in accordance with paragraph 20 of General Assembly resolution 59/197 of 5 September 2006, UN Doc. A/61/311, paragraph 44.

⁷ *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 [“Basic Principles on the Use of Force”].

⁸ *Code of Conduct for Law Enforcement Officials*, Adopted by General Assembly resolution 34/169 of 17 December 1979 [“Code of Conduct”].

⁹ ICCPR, article 2(3); Human Rights Committee General Comment 31, paragraphs 15, 16, 18.

¹⁰ Human Rights Committee General Comment 31, paragraph 15. For a complete discussion of the right to an effective investigation, see: International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations, A Practitioners’ Guide*, Geneva, 2006, pages 57-79.

¹¹ Human Rights Committee General Comment 31, paragraph 15; Basic Principles on the Use of Force, Principle 23.

¹² See: International Law Commission, “Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries”, 2001, Yearbook of the International Law Commission, 2001, vol. II, Part Two, Chapter II, “Attribution of Conduct to a State”, articles 4-11.

¹³ Human Rights Committee General Comment 31, paragraph 8.

¹⁴ ICCPR General Comment 31, paragraph 16; UN Principles on the Right to a Remedy and Reparation, Principles 15-22; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principles 5, 8-17. See also, Human Rights Committee General Comment 31, paragraph 15.

¹⁵ Human Rights Committee, *José Vicente y Amado Villafañe Chaparro et al v Columbia*, (1997) Communication No. 612/1995, paragraph 8.2.

¹⁶ Basic Principles on the Use of Force, Principles 22-26 and Code of Conduct, commentary to article 3.

¹⁷ See, e.g., Basic Principles on the Use of Force, Principles 22-26.

¹⁸ Declaration on the Protection of All Persons against Enforced Disappearance, article 13(2); UN Principles on Extra-legal Executions, Principle 10; UN Principles on the Investigation of Torture, Principle 3(a).

¹⁹ See, e.g.: UN Declaration on the Protection of All Persons from Enforced Disappearance, article 16; UN Principles on Extra-legal Executions, Principle 15; UN Principles on the Investigation of Torture, Principle 3(b).

²⁰ See, e.g., UN Declaration on the Protection of All Persons against Enforced Disappearance, article 13(4); UN Principles on Extra-legal Executions, Principle 17; UN Principles on the Investigation of Torture, Principle 5(b).

²¹ Human Rights Committee, Concluding Observations on Serbia and Montenegro, (2004) UN Doc. CCPR/CO/81/SEMO, paragraph 9.

²² General Assembly Resolution 57/228 on “Khmer Rouge Trials” of 18 December 2002.

²³ See ICCPR, article 2(3).

²⁴ Human Rights Committee General Comment 20, paragraph 15.

²⁵ Emergency Decree, section 9.

²⁶ Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, 1 October 1995, online: www.article19.org/pdfs/standards/joburgprinciples.pdf. See also Report of the Special Rapporteur on Freedom of Expression, E/CN.4/1995/32, 14 December 1995. These Principles have been endorsed by Mr. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, in his reports to the 1996, 1998, 1999 and 2001 sessions of the United Nations Commission on Human Rights, and referred to by the Commission in their annual resolutions on freedom of expression every year since 1996. Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information provide useful guidance on the relationship between freedom of expression and national security states:

“Subject to [specific exceptions for secret information and information gained in the public service], expression may be punished as a threat to national security only if a government can demonstrate that:

(a) the expression is intended to incite imminent violence;

(b) it is likely to incite such violence; and

(c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.”

²⁷ Concluding Observations of the Human Rights Committee on Thailand CCPR/CO/84/THA (18), 28 July 2005 (Advanced Unedited Version). See, e.g.: “CAPO press conference 9 April 1030 hrs”, <http://www.capothai.org/capothai/capo-press-conference-9-april-1030-hrs>; National News Bureau of Thailand, “ICT to curb defamatory internet contents”, 10 April 2010, online: <http://thainews.prd.go.th/en/news.php?id=255304100026>; National News Bureau of Thailand, “MICT claims 300 radical sites found daily”, 11 April 2010, online: <http://thainews.prd.go.th/en/news.php?id=255304120038>. For a critical view, see also: Southeast Asian Press Alliance, “SEAPA troubled by Thailand’s clampdown on TV station, websites; free expression gravely threatened under state of emergency”, 8 April 2010, online: <http://www.seapabkk.org/newdesign/newsdetail.php?No=1249>; The Nation, “A Dark Day for Thai Freedom of Expression”, 5 April 2010, online: www.nationmultimedia.org; Thai Netizen Network, “The Thai Netizen Network’s statement on the censorship of websites and suppression of freedom of expression”, 10 April 2010, <http://thainetizen.org/>.

²⁸ International Covenant on Civil and Political Rights, article 4.

²⁹ ICCPR, article 4, Human Rights Committee General Comment 29.

³⁰ See: International Commission of Jurists, *Thailand’s Emergency Decree: More Power, Less Accountability*, Bangkok, 2005; International Commission of Jurists, *Legal Memorandum on the Implementation of Thailand’s Emergency Decree*, Bangkok, 2007; International Commission of Jurists, *Thailand’s Internal Security Act: Risking the Rule of Law?*, Bangkok, 2010.

³¹ *Martial Law Act*, B.E. 2457 (1914), article 6. See also the serious restrictions on human rights in articles 2, 5, 7, 9, 11, 15(ii), for example.

³² Bangkok Post, “Suthep: Martial law not necessary”, 11 April 2010; Bangkok Post, “New Politics calls for martial law”, 13 April 2010.

³³ See, e.g., Human Rights Committee General Comment 29, paragraph 14, stressing that the right to a remedy is inherent in the obligations of the Covenant as a whole and cannot be subject to derogation even during a properly declared state of emergency.