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COMMUNIQUE DE PRESSE - COMUNICADO DE PRENSA

9 JULY 2010

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EMERGENCY DECREE IN BANGKOK AND 18 THAI PROVINCES MUST BE REVOKED IMMEDIATELY

The ICJ welcomes the Royal Thai Government's decision to revoke the state of emergency in five provinces; however, this action is insufficient. While the ICJ understands that Thailand currently faces complex security challenges, the ICJ calls upon Prime Minister Abhisit Vejjajiva and the Royal Thai Government to revoke immediately the declaration of the State of Emergency in Bangkok and in the 18 other provinces where it has been in place since May 2010.

States of emergency must not be used to undermine the rule of law or democratic institutions. International law carefully controls the use of states of emergency and the measures that countries may take in such situations. International law allows states to take exceptional and temporary measures to partially suspend the application of certain rights pursuant to a state of emergency that has been notified to the Secretary General of the United Nations (called a "derogation"). However, no right that has been derogated from will ever cease to apply entirely.

Thailand has formally derogated from the rights to freedom of expression, freedom of movement and freedom of assembly in Bangkok, Nonthaburi province, and in certain districts of Samut Prakan, Pathumthani, and Ayutthaya provinces. Notably, Thailand has not derogated from the right to a fair trial or the right to be free from arbitrary detention.

Under international law not every violent situation may be considered a threat to the nation. Certainly not mere unrest, local and isolated law and order disturbances or the commission of serious crimes alone.

The imposition or continuation of a state of emergency that derogates from or restricts human rights cannot be justified based merely on an apprehension of a potential danger or because it is the favoured or most convenient tool for the security forces; the use of these powers is only justified when no lesser measures could be used to counter the specific threat to the life of the nation.

"Vague and general future threats and individual criminal acts cannot justify the continued imposition of a state of emergency and the derogation from protected rights," said Mr. Roger Normand, the Director of the ICJ's Asia-Pacific Programme.

The ICJ has in the past expressed concern regarding the vagueness and over-breadth of the provisions of Thailand's Emergency Decree and the potential for the abuse of power by security forces operating under its provisions. Likewise, the UN Human Rights Committee concluded in 2005 that Thailand's Emergency Decree "does not explicitly specify, or place sufficient limits" on derogations from protected rights.

Under international law, during a state of emergency, the powers provided to security forces, as well as the application of any measures that adversely affect the enjoyment of human rights, must be clearly set out by law, be consistent with the purpose of protecting human rights, and must not be used in a way that undermines the maintenance of a democratic society.

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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Arbitrary violations of protected rights, even when a valid derogation has been entered, are never lawful. The ICJ considers that the current application of certain powers under the Emergency Decree are disproportionate and, therefore, arbitrary. Furthermore, certain measures taken based on Thailand's derogations do not appear to be carefully tailored to address an actual, clear, present, or imminent danger. The ICJ is concerned about the repeated and continued use of Emergency Decree warrants to hold individuals in administrative detention in connection with peaceful expressions of political dissent, as well as the massive and sweeping censorship of community radio and the television, print publications, and web-sites of groups perceived to be politically opposed to the ruling coalition government.

For example, the Centre for the Resolution of the Emergency Situation has chosen to censor entire publications, television and radio stations, and websites rather than restricting the publication or transmission of specific, individual articles or commentaries that advocate violence or pose other direct and specific threats to the life of the nation. Even where a valid derogation has been entered under international law, human rights must not be restricted to a greater extent than strictly necessary.

"As the President of the Human Rights Council, Thailand should lead the world in demonstrating respect for human rights, including during times of crisis, by strictly adhering to its international legal obligations. At the domestic level, reconciliation can only be achieved through the scrupulous respect for human rights, including peaceful expressions of dissent," said Mr. Normand.

BACKGROUND

The continued imposition of a state of emergency for a further three months in Bangkok and 18 Thai provinces has been publicly justified by senior officials on the basis of concerns that violent unrest could resume *in the future*, continuing incidents of dissent, the need to maintain economic stability, the continued existence of misinformation, and the commission of specific criminal acts of violence. These justifications have been advanced in the face of recent assurances from the Ministry of Foreign Affairs that "normalcy and stability" have been restored in Thailandⁱ as well as statements by the Prime Minister in the international press touting Thailand's recent economic performance, and despite the fact that international standards prohibit derogation from protected rights to maintain economic stability *per se*.

ENDS

ⁱ "Backgrounder: Current Political Situation in Thailand", 15 June 2010, page 1, available from the Ministry of Foreign Affairs of Thailand, online: <http://www.mfa.go.th/web/2670.php?id=22203>.