

Thailand: 19 years on, emergency measures in Deep South must be lifted

Tomorrow marks 19 years since the Emergency Decree on Government Administration in States of Emergencies (the Emergency Decree) was used by the then Prime Minister of Thailand to declare a state of emergency in Thailand's southern border provinces (Deep South). The law grants the Prime Minister and his delegates far-reaching powers, allowing them to override the authority of any government ministry or agency, civilian or military.

As the [ICJ has previously shown](#), sections 4, 9, 11, 12, 16, and 17 of the Emergency Decree do not comply with Thailand's human rights obligations. These sections grant extraordinary but vaguely conceived powers to the Prime Minister and relevant authorities, allowing them to unduly limit or even suspend a wide range of human rights guaranteed under the Thai Constitution and the International Covenant on Civil and Political Rights (ICCPR). One notable example is Section 11 (6) of the Decree, which authorizes the Prime Minister to order any person "not to perform any act or to perform any act" deemed necessary for national security.

The Decree also permits 'competent officials' to arrest and detain persons for up to 30 days without charge, outside the normal criminal justice system, in places like military camps and without judicial oversight, even if they are not suspected of committing a criminal offense. Authorities using these powers are not obligated to bring detainees before a court at any stage of their confinement. It has been misused to limit the right to liberty and security of persons, protected under Article 9 of the ICCPR.

"The Decree must be ended or substantially amended to comply with Thailand's international legal obligations, and emergency measures must be lifted from the provinces currently under it in the Deep South of Thailand without delay. This extraordinary decree has remained in effect longer than necessary, with inadequate checks and balances, leading to the suppression of fundamental freedoms, abuse of power, and violations of human rights," said Melissa Upreti, ICJ Regional Director for Asia and the Pacific.

On 16 July 2005, the Prime Minister of Thailand enacted the Emergency Decree and declared a state of emergency in three southern border provinces on 20 July, in response to an armed insurgency that had reignited in January 2004. The Prime Minister justified the Emergency Decree as a necessary measure to address the deepening conflict in southern Thailand.

Despite a significant decrease in violent incidents in the region, particularly following peace dialogues between the Thai government and insurgent groups since 2013, the emergency status in the Deep South has been renewed every 90 days without publicly disclosing detailed findings of necessity assessments. This includes the [latest extension on 9 July 2024](#) by the Cabinet for the period between 20 July and 19 October 2024, marking the 77th extension. Only a few districts have seen its withdrawal.

"Apart from lifting the emergency measures in the provinces currently under it, the Decree itself should also be repealed or heavily amended, along with other security laws enforced in the region, such as the 1914 Martial Law, without undue delay to bring it into compliance with international human rights law, particularly the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a party," added Upreti.

In the context of the Deep South, emergency powers are typically exercised alongside the 1914 Martial Law, which allows for 7 days of administrative detention without warrant, charge, or judicial oversight, thereby enabling individuals to be detained for up to 37 days. Between January 2019 and December 2023, the Duay Jai Foundation, a human rights group, documented at least 721 alleged cases of arbitrary detention under Martial Law and the Emergency Decree, including some children aged 17.

There have been credible allegations of torture and ill-treatment reported by former detainees to civil society organizations and the National Human Rights Commission of Thailand. For instance, in 2022, the Duay Jai Foundation interviewed 40 former detainees arrested under Martial Law and the Emergency Decree, 10 of whom alleged they were also victims of torture and ill-treatment.

The Decree further allows for the promulgation of regulations to restrict rights such as freedom of expression, assembly, and movement, without adequate safeguards. The ICJ recalls that under the ICCPR, any limitation on the exercise of these rights must be strictly necessary to meet a national security purpose and proportionate to that end; in other words, the least restrictive means.

The Decree also unduly restricts the judiciary's role in examining the lawfulness of these measures and reduces the possibility of civil, criminal, or disciplinary action against those exercising authority under the law, undermining a core judicial function under the rule of law. These functions of the Decree indicate an absence of adequate legal protections against a broad range of violations and foster a climate of impunity.

Background

Between January 2004 and April 2024, there were 22,495 security incidents recorded by [Deep South Watch](#), resulting in 7,594 deaths and 14,122 injuries.

While Thailand might have sought derogation from certain human rights protections, in response to the state of emergencies in the Deep South, it has never done so. It did make derogations in relation to other emergency situations, including the [invocation of Martial Law](#) by the military junta during the coup d'état in May 2014 and the [promulgation of the Emergency Decree](#) in response to the COVID-19 pandemic in June 2020.

In 2014, the UN Committee against Torture, in its [concluding observations](#) on the initial report of Thailand, expressed concern at the numerous allegations of torture and ill-treatment during the state of emergency in the southern border provinces and noted that the state of emergency had been prolonged and that the exercise of human rights had been restricted. It recommended that Thailand take vigorous steps to review its existing emergency laws and practices without delay and repeal those incompatible with its obligations under the Convention against Torture.

In 2017, the UN Human Rights Committee, in its [concluding observations](#) on the second periodic report of Thailand, recommended that Thailand amend the Martial Law Act and the Emergency Decree to ensure that they comply with all the provisions of the ICCPR, including with the guarantees against incommunicado detention, and amend criteria with a view to lifting the Martial Law and Emergency Decree in the provinces currently under them without undue delay.

In August 2005, the ICJ released a report titled "[More Power, Less Accountability](#)," which analyzed concerning provisions of the Decree.

In July 2007, the ICJ released another report titled "[The Implementation of Thailand's Emergency Decree](#)," which summarized research and analysis on the implementation of the Emergency Decree in Thailand's Deep South in light of international human rights law and best practices around the world.

See the full statement in Thai [here](#).

Further reading

For more information on the use of the Emergency Decree to cope with the COVID-19 pandemic, see: [English](#) and [Thai](#).

For more information on the implementation of Thailand's Emergency Decree in response to protests in 2020, see: [English](#) and [Thai](#).

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