



The State of Human Rights in Thailand in 2009

The return of the internal-security state

Since the military coup in Thailand of September 2006 regressive anti-human rights forces and their allies have firmly re-entrenched themselves in all parts of government, including in agencies ostensibly established to protect human rights. Accompanying their resurgence is a new type of internal-security state, in certain respects reminiscent of its forebears of earlier decades, in others, exhibiting an original authoritarian style, with a more refined public-relations and a sharper concern for new types of political and technological threats to its control of society.

Among the features of this resurgent internal-security state are greater executive control over the judiciary; the targeting of speech and thought criminals for alleged computer offences and lese majesty; impunity for all manner of criminal acts and abuses—not only for state forces like police and army personnel but also for persons allied with the internal-security state’s interests or which it finds expedient to use to make fast political gains; and, the continued institutional entrenching of anti-human rights interests.

Double legal standards and sliding judicial credibility

At a meeting of lawyers and jurists at the Asian Human Rights Commission (AHRC) in Hong Kong during April a participant from Thailand identified the key issue for her country’s legal system as political control of the judiciary. Her statement was remarkable not because it revealed something that other participants didn’t already know, but because not long ago few professionals from Thailand willingly admitted that their laws and courts operate according to double standards. Now, few can deny it.

The double standards were all too apparent throughout 2009. Following protests that forced leaders of the Association of Southeast Asian Nations and partner countries to flee from a summit venue in Pattaya, the prime minister, Abhisit Vejjajiva, imposed a



state of emergency as blockades and violence spread in Bangkok. The army deployed. A court promptly issued arrest warrants for the red-shirted demonstrators' leaders. Some were quickly rounded up and detained, while others went into hiding. At subsequent events throughout the year, special powers were repeatedly invoked to prevent protestors from gathering.

The red-shirt protests adopted many of the methods that the yellow shirts that took over Government House and two international airports for an extended period towards the end of 2008, but were treated very differently. The yellow shirts—mobilized as a proxy force for the internal-security state—were allowed to stay put until the government was forced out through a court ruling on a narrow question under the army-imposed 2007 Constitution. No soldiers came to eject them. The legal process took weeks to move against the organizers. When the new prime minister was questioned on the authorities' inactivity he disingenuously said that it was a matter for the police, not him. The criminal inquiries have been repeatedly postponed and although charges are now being brought against yellow shirt leader Sondhi Limthongkul and others it remains to be seen whether or not they will ever be held to account. If they are, it will not be because the criminal process has been allowed to run its course but because they will have served their purpose and it may no longer be expedient for their military backers and others to have them around any longer.

The extent of impunity enjoyed by the yellow shirts is extraordinary also because theirs were not merely criminal offences but criminal offences going to the heart of the integrity of the government. The takeover of the prime minister's quarters was not just an assault on a particular incumbent but on the notion of an elected legislative head, and on the notion of parliamentary democracy itself. This diminishing of certain symbols and concepts of government is a further indicator of the internal-security state's return.

At the beginning of September, the National Anti-Corruption Commission (NACC) ruled that former Prime Minister Somchai Wongsawat should be charged with abuse of power and former Deputy Prime Minister Chavalit Yongchaiyudh should be charged with excessive force leading to injuries to demonstrators, while four senior police officers should receive administrative punishment for abuses of authority, leading to deaths and injuries during the People's Alliance for Democracy (PAD) demonstrations on October 7 last year.



Another case concerning demonstrations happened in the country's North, where three leaders of a farmer's demonstration in June 2009 urging the government to increase the price of rice were punished with six months imprisonment by the Chiengrai Provincial Court in July 2009,

following an extremely rapid trial process.

Meanwhile, a variety of criminal cases throughout the year demonstrated the extent to which the courts, which a decade ago were beginning to assert some independence and display a higher level of integrity, are back under the thumb of the internal-security state.

Among them, the Songkhla Provincial Court issued a remarkable finding in the post-mortem inquest into the deaths of 78 men in army trucks after the protests outside the Tak Bai District Police Station of October 2004. Despite overwhelming evidence to implicate senior army officers, the court absolved all officials and military persons of responsibility for the deaths. The court acknowledged that the victims had suffocated to death, but glossed over how and why: namely that the men were beaten and then piled five-deep in trucks for five to six hours. This is despite the fact that the purpose of the inquest was to document and reveal as many details about the incident as possible, and despite the detailed testimonies of forensic experts, doctors and others which were omitted from the court's findings. The court also implied that extenuating circumstances meant that the army officers could not be held responsible, even though the purpose of the inquest was not to determine guilt of innocence—or even suggest it—but simply to document the facts and establish whether or not a case exists for criminal trial. The files from the inquest have now been transferred back to the public prosecutor, but after five years of delays and obfuscation, few of the people involved have any expectancy that justice will be done.



Computer crimes, speech crimes, thought crimes

According to an article in the Bangkok Post of April 20,

Security agencies are keeping a close watch on a group they suspect of feeding lies to international media outlets on the recent red shirt riots.

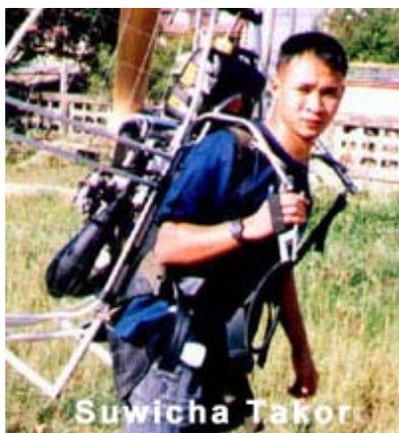
Government spokesman Panithan Wattanayagorn said members of the group had left the country in recent days to disseminate a “different version of events and accounts” to the international media.

Details of the group, which is believed to consist of about 10 people, could only be made public by the army and police chiefs, Mr Panithan said.

The government would counter them by releasing its own information to the international media, explaining what is really happening.

The report is typical of many throughout the year, speaking to the return of the internal-security state through the army and police joint monitoring of speech and ideas that challenges the internal-security state’s version of national events and affairs.

Nowhere is the attack on free speech and thought more evident than in the use of law against persons critical of the monarchy, in the desperate attempts to silence Internet debate on pressing problems of national importance, and in the intersection of these two.



One of the enormous changes between the old Thailand and the new is in the field of technology and communications. It is no coincidence that many persons now accused of lese-majesty have been accused of it because of their use of computers. Among them is 34-year-old Suwicha Takor, an engineer with three young children, who a court sentenced in April to 10 years’ imprisonment for posting images on the Internet that were allegedly offensive to members of the royal family. He was convicted of lese-majesty and also with having



wrongfully used a computer under the nebulous provisions of the 2007 Computer Crime Act, such that he imported “false computer data in a manner that is likely to damage the country’s security or cause a public panic”. (Photo: Suwicha Takor)

The month before, police officers raided the Bangkok office of an independent online news site, Prachatai, and arrested Chiranuch Premchaiporn, its director, under a provision of the same so-called act—which was passed without debate by an army-appointed legislature—that allows service providers to be charged with the same offences as persons posting content deemed to threaten the internal-security state. In Chiranuch’s case, the “offence” was that she had not removed comments offensive to the monarchy from the website fast enough.



The Prachatai raid is part of a pattern under the internal-security state to target certain groups and individuals for harassment, arrest and prosecution as a warning to others not to overstep the many boundaries that prohibit free debate on topics of great importance to the country and its people, including through the use of lese-majesty and criminal defamation laws, as well

numerous other ambiguous offences that may be stretched to cover just about anybody and any situation.

(Photo: www.prachatai.com)

The proliferation of many types of media in Thailand gives the false impression that there is a relatively high level of free expression. In fact, most of the broadcast media are tightly controlled and much of them are in the hands of government agencies and the armed forces. The newspapers and other print periodicals, which in the 1990s had a good reputation, have for the most part in recent years practiced heavy self-censorship or have become openly biased in their reporting. The Internet and streets remain spaces for communication, which is why the authorities have tried to patrol both vigorously and make examples out of their targets. The few groups that dare to publish and allow debate on otherwise prohibited topics, like Prachatai, become prey for politically motivated legal actions.



In August, another example of this pattern came in the case of 47-year-old Darunee Chanchoengsilapakul, a supporter of ousted premier Pol. Lt. Col. Thaksin Shinawatra, whose public invectives against the monarchy resulted in her conviction and sentencing to 18 years in prison. Darunee attempted three times to obtain bail but it was denied, although the court had no specific grounds upon which to refuse it. The court also tried her behind closed doors, on the pretext that it was in the interests of public order and national security. Her lawyer submitted an application to the Constitution Court for the trial to be invalidated on the basis that it was in violation of her constitutional rights to try her in this manner, but it was refused. The internal-security state again had its way with the justice system.

The AHRC is not aware of another case in recent times in which a defendant has been held up as an extraordinary threat over a question of free expression. Darunee was apparently treated in this manner because she was impertinent enough to think that she could actually exercise her legal rights and fight the charges, rather than plead guilty and seek a royal pardon as other defendants in lese majesty cases chose to do, including Suwicha.

Another feature of the entrenched abuse of human rights in Thailand that emerged in Darunee's case is the use of informal methods of punishment, particularly for people accused of crimes that are portrayed as socially reprehensible, such as hers. After her transfer to the Central Women's Correctional Institution, Darunee suffered a number of forms of maltreatment, including a lack of medical care, isolation from other detainees, and being forced to wear a type of uniform for serious prisoners and a card indicating her crime to other detainees, which was written in the strongest language possible. Although the first of these is a systemic problem, the others seem to have been intended as forms of special punishment because of the nature of her offence. The AHRC has since expressed its concerns regarding her case to international agencies and to the Kamlangjai Project for women detainees, under the directorship of Princess Bajrakitiyabha Mahidol.

"Unsubstantiated" police abuses and entrenched impunity

In 2009, the permanent representative of the government of Thailand at the UN Human Rights Council, Sihasak Phuanketkeow, complained that allegations that the police are the top violators of human rights in his country are "sweeping" and "unsubstantiated". Yet throughout the year the police continued to enjoy blanket impunity for all types of gross abuses in the country, from the forced abduction,



disappearance and presumed murder of human rights lawyer Somchai Neelaphaijit, to the alleged killing of at least 28 people by police at a single station in Kalasin.



The investigations into the abductors and killers of Somchai made no discernible progress during the year, even though in March, five years after his disappearance, the permanent representative in Geneva insisted that his government “attaches the highest priority” to solving the case. If this is true then it is an indictment on the entire criminal justice system of Thailand that after five years and innumerable squandered leads and opportunities, as well as a huge amount of publicity at home and abroad, no one has been held to account for this offence. There are some reports that even the one police officer found guilty of a relatively minor crime in connection with the disappearance, Pol. Maj. Ngern Tongasuk—who was released pending appeal—may have faked his own death in order to escape justice, which is something that he could only have done with the assistance of other police and authorities. (Photo: Somchai Neelaphaijit)

Meanwhile, out of 28 cases of alleged killings by the police in Kalasin that have been brought to the attention of the Department of Special Investigation (DSI), Ministry of Justice, so far just two are being formally investigated and carried forward, despite repeated requests of family members. To date only one has come to court—yet already there are grave concerns that justice in this case too will be quickly perverted. The six police accused—Pol. Col. Montree Sriboonloue, Pol. Lt. Col. Samphao Indee, Pol. Lt. Col. Sumitr Nanthasathit, Pol. Snr. Sgt. Maj. Angkarn Kammoonna, Pol. Snr. Sgt. Maj. Sutthinant Noenthing and Pol. Snr. Sgt. Maj. Phansilp Uppanant—were all promptly given bail, which leaves them free to take many actions to intimidate the relatives of the victim and threaten or kill, if necessary, witnesses.

Such threats are not idle and are easily carried out: for instance, in the case of the murder of environmentalist monk Phra Supoj Suwajo in 2005, in which the police are believed to have colluded to protect the persons behind the killing, so far three witnesses have also been killed under mysterious circumstances, within a short period of time from each other. In one case, the victim was found dead in a small canal. The police refused to treat the death as suspicious and pressured the family to conduct the funeral and dispose of his remains on the same day the inquiries were completed. However, other inquiries found that his neck had been broken and that there was more evidence to suggest murder, such as that the victim had a lighter in one hand,



which he would not have been holding on to if he had been trying to swim to save his life in a natural drowning incident.

The manner in which the bail was given to the police accused in the case from Kalasin that is going to court—the murder and faked suicide of Kiettisak Thitboonkrong—also was suspicious: Angkarn, Sutthinant and Phansilp appeared on 20 May 2009, Samphao on May 28, Montree on June 17 and Sumitr on July 2, and on each occasion the same judge appeared to hear the bail requests. The granting of bail by a single judge over a number of days in this manner is highly irregular, as judges are assigned this task on rotation and it is improbable that the same judge would appear repeatedly to hear each one of these applications in the same case, leading persons close to the case to suspect that the trial has already been compromised even before it has begun.

There are many reasons that the police enjoy impunity and that the number of actual reported cases of police abuse in Thailand is but a tiny fraction of the total. One important reason is that the majority of victims do not bother to complain, or thereafter retract their complaints. Experience shows that the lodging of complaints invariably only brings official letters saying that the matter is being looked into and perhaps finally a letter from the police saying that they investigated themselves and found that they had done nothing wrong. In the absence of any credible mechanisms to receive and investigate complaints against the police and prosecute alleged perpetrators, there is no way that large numbers of people will come forward and risk harassment, threats and inducements in an attempt to obtain justice. Complainants soon get the message and reach arrangements so that formal inquiries or prosecutions are rare. And as most victims are poor and unable to hire a lawyer or find other persons who can help, only a few cases are brought to public attention through the intervention of local rights groups, journalists or other civic-minded citizens.

To illustrate, in the latter part of 2009 the AHRC was informed of a case of a police shooting in a central province. The victim was typical: a young man who had been allegedly involved in some petty crime and towards whom the police feel no compunction in treating as they wish; they are aware that this type of target will not attract interest or sympathy. The police officer shot at the young man three times during a fight at a concert, hitting him twice as he was scaling a fence; according to witnesses, the victim was only trying to get away when the policeman fired. The officer then allegedly walked over to where he was lying, seriously wounded on the ground, and began kicking him before others intervened. When a group of his friends addressed other officers at the scene over the killing, they accused one of them, not the



policeman, of shooting the victim and around half a dozen officers and security volunteers assaulted him too.

The young man's relatives found him at a local hospital, in a serious condition but alive. The family members went to the police station to make a complaint. As they made it, they saw an officer matching the description of the shooter moving around in the background and watching them. Shortly after, they started getting phone calls from the police, asking them how they could help to settle the matter. The family fearfully obliged and suggested an amount that would cover the cost of hospital expenses and then some. They negotiated directly with a senior officer on behalf of his subordinate. In the end they got less than a third of what they asked for, paid in cash by the same officer. The young man survived his injuries, but out of persistent concern that the police could make more trouble with him, the family sent him away from the area.

Underlying all of this is the notion, closely tied to the internal-security state, that the extent to which redress exists at all it should be personalized, not institutionalized. A police officer can come to make a payment with which to satisfy the problem of a shooting, but there should not be institutional arrangements to address such an incident. This type of thinking goes to the highest levels of all parts of government, including among those who pretend to have liberal outlooks.

For instance, after the raid on Prachatai, the prime minister said that Chiranuch would be entitled to make a complaint if she feels that the police action against her was unjustified. He reportedly added that, "If [Prachatai] feel there was an error in law enforcement they can make a complaint to me, I will take care of it." His comment is reminiscent of the type of statements made by his predecessor, Thaksin, to aggrieved families of victims during the 2004 "war on drugs", and it reveals the extent to which the notion of complaint and redress is trivialized. How would the prime minister "take care of it"? What measures are in place for the prime minister to undertake routine inquiries into police operations? Would he be implying that all persons in Thailand with complaints against law enforcement authorities should take them up with him? If so, the prime minister would soon find himself overwhelmed daily with thousands of complaints of illegal arrest, arbitrary detention, fabricated evidence, falsified charges, corruption, entrapment, extortion, custodial assault and torture, extrajudicial killing and enforced disappearance, just to name a few of the abuses that the police in Thailand routinely perpetrate.



The prime minister's flippant promise to "take care of it", which anyhow he did not, is indicative of the feudal patterns of thought that underpin the internal-security state. When someone has something bad happen to her then she is expected to make a complaint like one of her ancestors, coming to the outside of a palace to ring a bell or stand at a post and cry out her petition in the faint hope of receiving a kind hearing from its occupant. When these types of practices are continued in modern forms then institutional measures and systematic procedures for handling and processing complaints and dealing with abuse are not established, or if established, they are not taken seriously either by the general public or even the people responsible for giving them effect.

This is the real story of Thailand's "unsubstantiated" police abuses—a story of countless untold incidents of this sort that go on around the country every day, in which ordinary citizens who given a chance would make a protest and fight a case are instead forced to reach humiliating compromises if only to save their lives and livelihoods. Even in cases involving high-profile persons, like Angkhana Neelaphaijit, the wife of disappeared lawyer Somchai and founder of a group dedicated to address forced disappearances, there are persistent concerns for the safety of her and her family. In mid-2009 somebody broke into two vehicles belonging the family, one the car from which Somchai was abducted, on two separate dates. The manner of the break-ins suggest that they were not attempted thefts of property or of the vehicles, but that the perpetrators were sending a message to the family that they are not safe.

In 2005 the Human Rights Committee presented the following findings and recommendations to the government of Thailand concerning its compliance with the International Covenant on Civil and Political Rights, which is a legally-binding treaty that the country joined voluntarily:

"10. The Committee is concerned at the persistent allegations of serious human rights violations, including widespread instances of extrajudicial killings and ill-treatment by the police and members of armed forces, illustrated by... the extraordinarily large number of killings during the 'war on drugs' which began in February 2003. Human rights defenders, community leaders, demonstrators and other members of civil society continue to be targets of such actions, and any investigations have generally failed to lead to prosecutions and sentences commensurate with the gravity of the crimes committed, creating a culture of impunity...



"The State party should conduct full and impartial investigations into these and such other events and should, depending on the findings of the investigations, institute proceedings against the perpetrators. The State party should also ensure that victims and their families, including the relatives of missing and disappeared persons, receive adequate redress... The State party should actively pursue the idea of establishing an independent civilian body to investigate complaints filed against law enforcement officials...

"15. The Committee is concerned about the persistent allegations of excessive use of force by law enforcement officials, as well as ill-treatment at the time of arrest and during police custody. The Committee is also concerned about reports of the widespread use of torture and cruel, inhuman or degrading treatment of detainees by law enforcement officials, including in the so-called 'safe houses'. It is also concerned at the impunity flowing from the fact that only a few of the investigations into cases of ill-treatment have resulted in prosecutions, and fewer, in convictions, and that adequate compensation to victims has not been provided...

"The State party should guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention. The arrested person should have an opportunity immediately to inform the family about the arrest and place of detention. Provision should be made for a medical examination at the beginning and end of the detention period. Provision should also be made for prompt and effective remedies to allow detainees to challenge the legality of their detention. Anyone arrested or detained on a criminal charge must be brought promptly before a judge. The State party should ensure that all alleged cases of torture, ill-treatment, disproportionate use of force by police and death in custody are fully and promptly investigated, that those found responsible are brought to justice, and that compensation is provided to the victims or their families." (CCPR/CO/84/THA)

The government has not ever seriously followed through on any of these recommendations. Until it does, the problem of "unsubstantiated" abuses and entrenched impunity will remain.



A human rights commission for human rights violators

The insidious influence of the police has now reached right into the National Human Rights Commission, which this year made a retired police general one of its members, and then gave him responsibility for the sub-committee on justice, from where he is now in a strong position to ensure that the commission does nothing to bring police perpetrators of rights abuse to account.

According to the new commission's chairwoman, Amara Pongsapich, in an interview during July, the reason that Pol. Gen. Vanchai Srinuwalnad got the job of monitoring legal and judicial affairs is that he has the "experience and interests". This is true enough: a police officer will certainly have the experience and interest to conceal human rights abuse. In fact, this has been a great tradition in Thailand, where police have also been appointed to the justice and interior ministries to protect their peers against allegations that they have violated human rights. It is the reason that this general was appointed to the commission, and from all accounts so far he has been doing a very good job at this. So far, he has managed to appoint a subcommittee to work with him on these issues that also consists only of police and other government officials; however, information about this and other subcommittees has not been made public—at time of writing, details only of the subcommittees under the former commission were on the commission's website.

The police officer shares his seat on the commission with—among others—a drafter of the regressive 2007 Constitution, a judicial bureaucrat, a ministerial inspector, and a businessman whom the former commission named as a human rights violator. Parinya Sirisaragarn, the owner of a salt extraction license, was named in a report of the National Human Rights Commission in April 2007 as being responsible for environmental degradation in the northeast. The damage includes soil erosion, land subsidence and collapse, and the entry of salt into the water table, making water undrinkable and unsuited for agriculture. The report recommended, among other things, that his licence be revoked; however, the AHRC confirmed that Parinya, in his capacity as managing director of Kijsubudom Co. Ltd., has continued to extract salt from the area.

The naming of Parinya as a human rights violator in an official document of the former commission apparently was not sufficient an obstacle to his appointment to the post. Nor, it seems, were his outrageous comments to senators prior to his election, including that if made a commissioner he would not necessarily welcome international



intervention on human rights issues in Thailand because this might be intended to interfere in the country's internal affairs; he then illustrated the point by alleging that the Falun Gong is backed by the CIA to interfere on human rights issues in China. He added that other countries are also violating the rights of the military regime in Burma, with which he is demonstrated great sympathy, by using human rights discourse to isolate the country.

Following the commission's appointment, the AHRC wrote to the International Coordinating Committee overseeing the status of national rights institutions under the Paris Principles in United Nations forums, to have its status downgraded. The AHRC pointed out that its selection and composition failed in every respect to comply with the principles, specifically that:

The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of: (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists...

None of the components of this section were complied with in the selection and appointment of the seven new commissioners in Thailand. The procedure for nomination and appointment did not afford any necessary guarantees to ensure pluralist representation. No effort was made to publicize the process of selection and appointment to the commission, whether by radio, television, Internet or other media, nor was any genuine effort made to solicit comments. The whole selection process, like the workings of the commission since, was secretive and contrary to human rights. No effort was made to check and interview the candidates, and the committees established for that purpose and appointed Senate—consisting of former army and police officers, senior bureaucrats and others from the internal-security state elite—simply rubberstamped the names that were put before them. It is therefore unsurprising that the new commission is neither pluralist nor independent and does not consist of social forces involved in the protection and promotion of human rights. None of its seven members are representatives of non-governmental organizations responsible for human rights, trade unions or concerned social and professional



organizations, despite the fact that there were applicants from these backgrounds to the commission whose names were not selected.

The pluralistic composition of a national rights institution and its independence are integral features for compliance with the Paris Principles. They are not optional. Therefore, the AHRC has sought for this commission to lose its status in international forums, and at time of writing is awaiting news of an upcoming review of its status.

Beyond this, the selection and appointment of the new National Human Rights Commission in a manner contrary to the very principles that the commission is supposed to represent is indicative of the return of the internal-security state, which has as its objective the emasculating of agencies that can threaten its mandate through their cooption. The manner of selection and appointment of the new commission as well as its composition are indicators of the deep anti-human rights culture that pervades all official institutions in Thailand, now including the National Human Rights Commission itself. The unfortunate consequence is that the commission is today not only of little significance to the government of Thailand, but also to the people of Thailand on behalf of whom and for whose rights it is supposed to act. It is not a human rights commission for human rights victims and defenders, but a human rights commission for the violators of rights. It is a human rights commission for the internal-security state of 2009.