

# AMNESTY INTERNATIONAL

## Public Statement

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### **Thailand's Internal Security Bill – sweeping powers for the military with little accountability**

Amnesty International is concerned that the “Draft Act on the Maintenance of National Security in the Kingdom” (Draft Act), currently under review by Thailand’s Council of State (the government’s legal advisory body), would, if passed into law, violate international human rights standards and further jeopardise human rights in Thailand.

The Draft Act vests sweeping and ill-defined powers in the military, in particular the Commander-in-Chief, including powers to take command of state agencies, to carry out long-term detention, and to suppress groups and individuals perceived by him as posing a threat to national security. The Draft Act will also ensure impunity from prosecution for human rights violations perpetrated under its provisions.

Amnesty International acknowledges the challenges, including security challenges, facing Thailand, and the duty that the Thai authorities have to ensure the safety of the population. However, the organization is calling upon the authorities to face these challenges while protecting and respecting the human rights of all. In this context, a recent statement by the Defence Minister Boonrawd Somtas that the clashes between anti-coup protesters and the police on 22 July 2007 in Bangkok provided justification for the Draft Act is a cause for concern.<sup>1</sup>

The Draft Act proposes the creation of several bodies. The powers of these bodies are concentrated in the hands of one man – the Director of a revived Internal Security Operation Command (ISOC) – who is the “Royal Army Commander-in-Chief” (Article 9).

The following powers are among those which the Army Commander-in-Chief, in his capacity as the Director of ISOC, would be able to exercise:

- Take command of “state agencies” – which, undefined and unlimited, may in effect mean the full civil service apparatus [Article 24];
- Impose restrictions on freedom of movement, assembly and information [Articles 25(2), 25(3) and 25(6)];
- Order “the use of military force” in accordance with Martial law [Article 25(8)];
- Arrest and detain a person, on the basis of a court warrant, for seven days initially, with extensions of up to 30 days in total [Article 26(1)];
- “Suppress” groups, individual and organizations perceived by him as posing a threat to national security [Article 26(2)];
- Compel any person to issue statements; appear in person or hand in “any documents or evidence” [Article 26(3)];
- Search individuals, vehicles and buildings [Articles 26(4)] – while this section states that such searches must be carried out according to the Criminal Procedure Code, under the terms of which court authorisation is usually necessary, there is no clear statement in this Act that a court warrant is required;
- Enter and search homes [Article 26(5)] – the terms of this section are contradictory and appear to suggest that such searches generally do not require a court warrant;
- Seize or freeze assets, document or other evidence [Article 26(6)]
- Order the “training at a special location” of suspects, in lieu of pressing charges against them, for up to six months (Article 31). Such training apparently requires the “consent” of the suspect, but with the threat of criminal procedures as alternative, the voluntariness of consent to such “training” is doubtful. In the absence of freely given consent, such training is therefore likely to amount to arbitrary detention.

Unless otherwise stated, none of the above provisions requires court authorisation for the powers to be exercised.

The Draft Act contains no objective criteria and no procedures to declare a state of emergency or establish that the use of these powers is necessary or justified. The only requirement is the subjective determination by the Army Commander-in-Chief that “there appears to be” or “there is an instance” of “an act which is a threat to the national security in the Kingdom” (Articles 24, 25). Such acts are very broadly and vaguely defined, including not only acts of violence but also “trans-border crime,” “propaganda” and “incitement” (Article 2). The powers given to the Army Commander-in-Chief can be used anywhere in Thailand at any time.

While Article 4 provides that there should be “checks and balances” on the exercise of power under this Act, there are no clear proposals beyond this generic provision to institute effective safeguards to ensure that the Army Commander-in-Chief’s sweeping powers can be countervailed. The limited scrutiny by the courts further compounds the risk that powers will be arbitrarily exercised and abused.

Moreover, Amnesty International is seriously concerned that the Draft Act exempts all government officials who have committed crimes while acting in accordance with the act from any criminal or civil liability, or even disciplinary action, if they had exercised “functions honestly, in a non-discriminatory manner and within reason” (Article 37). Amnesty International opposes granting impunity for any human rights violation.

The organization is further concerned that with the enactment of this draft law, several key human rights would be in jeopardy of being violated with impunity. These rights are enshrined in the Universal Declaration on Human Rights and provided, among others, in the International Covenant on Civil and Political Rights, to which Thailand is a state party. They include:

- Freedom of movement
- Freedom of assembly
- Freedom from arbitrary detention
- The right to fair trial procedures
- The right to privacy

Amnesty International’s research has shown that where legislation gives the military or other authorities special powers in contravention of international human rights standards, they facilitate other human rights violations beyond those that such legislation leads to in the first instance. These further violations have often included violations of the right to life and freedom from torture and other cruel, inhuman or degrading treatment or punishment.

As Amnesty International has reported in the past, Thailand has for decades enacted wide-ranging and vaguely worded Emergency Decrees and Martial Law, granting the military sweeping powers, particularly in the south. These have resulted in human rights violations, and have not brought peace or security. The Draft Act, if passed, would further entrench the legacy of impunity which has characterised recent Thai history. For example, investigations into the deaths of almost 200 people, caused by the security forces’ ill-treatment and excessive use of lethal force, during the violent suppression of attacks by armed groups on government facilities in three southern provinces on 28 April 2004, and during the Tak Bai demonstrations on 25 October 2004, have not resulted in those responsible being brought to justice. In addition, the enforced disappearances of more than 20 people since the escalation of violence in the south in 2004 remain unsolved.

To ensure respect for human rights, the Thai government must investigate, prosecute and hold accountable those suspected of crime, including of violent crime, using normal civilian laws and criminal procedures in civilian courts, rather than resorting to human rights violations in fighting threats to national security.

The Draft Act, as currently formulated, is in breach of international human rights law and standards, and accordingly, it should not be passed by the National Legislative Assembly (NLA). Amnesty International therefore calls upon the Thai authorities to either withdraw the Draft Act or else reform it extensively, to ensure full compliance with international human rights law and standards.

## **Background**

Following cabinet approval on 19 June 2007, the Draft Act was forwarded to the Council of State for review before it goes to the NLA for debate. The military-led Council for National Security established after the 19

September 2006 coup has exercised key decision-making powers over government appointments, including the NLA, which is serving as the interim legislature pending a referendum set for 19 August 2007 and elections envisaged to take place by the end of the year, as well as in the constitution drafting process.

<sup>1</sup>The Nation, 27 July 2007.