

# Joint Open Letter

@gun\_sangtong



## Concerns Regarding the Right to Peaceful Assembly in Thailand



**#WhatsHappeningInThailand**

@JAMESJWILSONBKK



1 September 2021

Prime Minister Prayut Chan-o-cha  
Royal Thai Government  
Government House  
1 Phitsanulok Road  
Dusit, Bangkok  
Thailand

**Re: Concerns regarding the right to peaceful assembly in Thailand**

Dear Prime Minister Prayut Chan-o-cha,

We, the 13 undersigned organizations, write to express our concern regarding violence and the excessive use of force by police at recent protests in Bangkok. We are troubled by the disproportionate response of riot police to provocations by protesters. We are also concerned by the arbitrary detention of protest leaders who have recently faced new criminal charges and have been denied bail and detained. Thailand needs to do more to protect protesters from violence and ensure that the public can safely exercise the right to peaceful assembly during the COVID-19 pandemic.

In recent weeks, both riot police and protesters have contributed to a significant escalation in violence at political protests in Bangkok. In August alone, police have forcibly dispersed at least ten demonstrations using rubber bullets, water cannons, and tear gas. At several protests, demonstrators threw rocks and Molotov cocktails, launched fireworks, and used slingshots to shoot nuts and bolts at riot police. Many of the clashes have occurred near Din Daeng intersection, which is close to the headquarters of the 1<sup>st</sup> Infantry Division of the Royal Guard. Youth participation in these protests has been high, with a large proportion of protesters under the age of 18.

Crowd control measures and other actions taken by law enforcement officers have frequently violated the human rights of protesters and international standards on the policing of protests. Police officers have repeatedly fired rubber bullets at protesters in an indiscriminate fashion. Footage from a recent protest shows riot police firing rubber bullets from a highway overpass at a distance too great to ensure the targeting of violent individuals in a manner consistent with international standards. In other videos, police officers appear to shoot rubber bullets at individuals passing on motorcycles, including at point blank range. Journalists, including those who visibly identified themselves as press, have also reported being hit with rubber bullets at protests.

Police have reportedly fired tear gas canisters directly at protesters. On 13 August 2021, a protester, Thanat Thanakitamnuay, was hit in the face by an object believed to be a tear gas canister fired by police at Din Daeng intersection and has reportedly lost sight in his right eye.

The recent use of firearms by unknown assailants at a protest raises further grave concerns. On 18 August 2021, three teenage protesters were shot with live ammunition in front of the Din Daeng Police Station. One of the victims—a 15-year-old boy—was hit by a bullet in the neck and remains in intensive care. According to a hospital report he is suffering from paralysis of both arms and legs and is not responding to stimulus. The other two injured protesters were reportedly 14 and 16 years old. The police have denied using live ammunition during the protest and said they are investigating the shooting.

In addition to cracking down on street protests, Thai authorities have continued their harassment of protest leaders and participants through legal processes. Since July 2020, more than 700 individuals, including at least 130 children, have been investigated in connection to their protest activities.<sup>1</sup> Between 7 and 9 August 2021, at least 32 protest leaders and participants were arrested and charged with a variety of offences. Ten were arbitrarily denied bail and subjected to pre-trial detention.

Two of the protesters who were arrested, Arnon Nampa and Jatupat Boonpattaraksa, are Gwangju Prize for Human Rights laureates. Arnon was charged, *inter alia*, with lèse-majesté (defaming the monarchy) in relation to a speech he gave on monarchy reform at a protest in Bangkok on 3 August 2021. Jatupat was charged with, *inter alia*, violating a COVID-19 emergency regulation after he organized a protest in front of Thung Song Hong Police Station on the same day. Seven other protest leaders—Parit Chiwarak, Nutchanon Pairoj, Sirichai Natueng, Phromsorn Weerathamjaree, Panupong Chadnok, Thatchapong Kaedam, and Panadda Sirimatkul—were all charged, *inter alia*, with violating a COVID-19 emergency regulation as a result of their participation in a peaceful protest in front of the Border Patrol Police Region 1 Headquarters on 2 August 2021. Sam Samart, a 19-year-old, was arrested on 7 August and charged, *inter alia*, with violating a COVID-19 emergency regulation in relation to the protest in front of the Border Patrol Police Region 1 Headquarters on 2 August 2021.

Many of these activists have previously been detained, prosecuted, and imprisoned for their protest activities. In 2016, Jatupat was sentenced to two-and-a-half years' imprisonment after he was convicted of lèse-majesté. Earlier this year, Parit was detained for 91 days on similar charges. Arnon, Panupong, and Phromsorn were also arrested earlier this year and were released from pre-trial detention in June.

The court determined that the activities of key protest leaders including Arnon, Parit, and Jatupat violated the bail conditions connected to their previous lèse-majesté cases, which prohibited them from participating in political protests or further defaming the monarchy. They could face years of pretrial detention.

At least eight of the detained protesters have reportedly tested positive for COVID-19 while jailed. On 26 August 2021, the Court of Appeal granted bail to Sirichai Natueng, Panadda Sirimasakul, and Sam Samart, and they were released from custody. Even though prisons are overwhelmed with COVID-19 cases, the other seven protest leaders remain in pre-trial detention, each having been denied bail at least twice.

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<sup>1</sup> Thai Lawyers for Human Rights, 'สถิตคดี 1 ปี หลังเยาวชนเริ่มปลดแอก: ยุติการใช้ "กฎหมาย เป็นเครื่องมือปราบปรามทางการเมือง', 18 July 2021, available at: <https://tlhr2014.com/archives/32258>.

## **Thailand's obligations under international law and relevant standards**

Article 21 of the International Covenant on Civil and Political Rights (ICCPR), which Thailand ratified in 1996, guarantees the right to peaceful assembly. While some restrictions on assembly are permissible under international law, any restriction on this right must be 'imposed in conformity with the law and . . . necessary in a democratic society.'<sup>2</sup> ICCPR Article 21 enumerates a list of the permissible justifications for a restriction on assembly: to protect national security, public safety, public order, public health, public morals, or the rights and freedoms of others.<sup>3</sup> No other governmental interest can justify a restriction on peaceful assembly.

The Convention on the Rights of the Child, which Thailand ratified in 1992, protects children's right to freedom of peaceful assembly.<sup>4</sup>

In its General Comment No. 37, the UN Human Rights Committee elaborated on the importance of the right to peaceful assembly:

Together with other related rights, [the right to freedom of peaceful assembly] constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism. Peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain and to establish the extent of support for or opposition to those ideas and goals. Where they are used to air grievances, peaceful assemblies may create opportunities for the inclusive, participatory and peaceful resolution of differences.<sup>5</sup>

The right to peaceful assembly is foundational to many other rights and, in particular, helps to ensure economic, social, and cultural rights are upheld. Moreover, protest is often one of the most effective tools available for marginalized individuals and groups to successfully advocate for change.<sup>6</sup>

For these reasons, international law is especially protective of protests with a political nature. According to the Human Rights Committee, 'assemblies with a political message should enjoy a heightened level of accommodation and protection.'<sup>7</sup> As such, the creation of perimeters around government buildings or official locations that demarcate where assemblies may not take place 'should generally be avoided, *inter alia*, because these are public spaces. Any restrictions on assemblies in and around such places must be specifically justified and narrowly circumscribed.'<sup>8</sup>

The threat to public health posed by the COVID-19 pandemic may justify narrow restrictions on the right to freedom of peaceful assembly, but such restrictions must meet the requirements of legality, necessity, and proportionality under international human rights law.<sup>9</sup> In assessing whether a measure is necessary and proportionate to a legitimate aim, consideration should be given to whether the measure in question is the least intrusive means of achieving that aim. The Office of the UN

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<sup>2</sup> International Covenant on Civil and Political Rights, Article 21.

<sup>3</sup> Ibid.

<sup>4</sup> Convention on the Rights of the Child, Article 15.

<sup>5</sup> Human Rights Committee General Comment No. 37, UN Doc. CCPR/C/GC/37, para. 1, (23 July 2020) [hereinafter General Comment No. 37]. Unofficial Thai language translation is available at: [https://www.icj.org/wp-content/uploads/2021/08/1.-ไทย\\_GC-37.pdf](https://www.icj.org/wp-content/uploads/2021/08/1.-ไทย_GC-37.pdf)

<sup>6</sup> Id. at para. 2.

<sup>7</sup> Id. at para. 32.

<sup>8</sup> Id. at para. 56.

<sup>9</sup> See Human Rights Committee General Comment No. 37, UN Doc. CCPR/C/GC/37, para. 45, (23 July 2020) [hereinafter General Comment No. 37].



High Commissioner for Human Rights has issued guidance on issues affecting civic space in the context of the COVID-19 pandemic, noting that:

States should ensure that the right to hold assemblies and protests can be realized, and only limit the exercise of that right as strictly required to protect public health. Accordingly, States are encouraged to consider how protests may be held consistent with public health needs, for example by incorporating physical distancing.<sup>10</sup>

In April 2020, UN Special Rapporteurs and Working Groups warned against the excessive use of force to enforce COVID-19-related restrictions on protesters, stating, ‘emergency measures can be a more direct threat to their life, livelihood, and dignity than even the virus itself.’<sup>11</sup> Moreover, aggressive police action against protesters may defeat the purpose of emergency measures. Arrest, detention, the use of force, and dispersal of protests can increase the risk of virus transmission for protesters and law enforcement officials alike.<sup>12</sup>

States have an obligation to protect journalists, monitors, and members of the public—as well as public and private property—from harm.<sup>13</sup> As such, state actors must take steps to ensure that protesters can exercise their rights safely, while exerting the ‘minimum force necessary’ to reduce the likelihood of injuries and property damage.<sup>14</sup>

In a joint statement, the UN Special Rapporteurs on the freedoms of association and expression declared that there is ‘no such thing in law as a violent protest’.<sup>15</sup> Rather, there are only violent protesters who should be dealt with individually. According to the Special Rapporteurs and Human Rights Committee, the right to peaceful assembly is an individual right, not a collective right, and must be treated as such.<sup>16</sup> Any isolated act of violence by some participants must not be attributed to other participants in the assembly. In addition, so long as organizers take reasonable efforts to encourage peaceful conduct during an assembly, they may not be held responsible for the violent actions of others.<sup>17</sup>

State authorities may only disperse assemblies when ‘strictly unavoidable,’ such as when there is clear evidence of an imminent threat of serious violence that cannot be dealt with by targeted arrests or other less drastic actions.<sup>18</sup> Before dispersing a crowd, law enforcement officers must take all reasonable measures to enable the assembly by providing a safe environment. Even if some protesters act violently, all those involved retain all their rights under the ICCPR, including, of course, the right to life and protection against arbitrary detention.<sup>19</sup>

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<sup>10</sup> Office of the High Commissioner for Human Rights, ‘Civic Space and COVID-19: Guidance’, 4 May 2020, available at: <https://www.ohchr.org/Documents/Issues/CivicSpace/CivicSpaceandCovid.pdf>.

<sup>11</sup> UN OHCHR, ‘COVID-19 security measures no excuse for excessive use of force, say UN Special Rapporteurs’, 17 April 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25802&LangID=E>.

<sup>12</sup> Amnesty International, ‘COVID-19 Crackdowns: Police abuse and the global pandemic’, 2020, p. 25, available at: <https://policehumanrightsresources.org/content/uploads/2020/12/ACT3034432020ENGLISH.pdf?x96812>.

<sup>13</sup> *Id.* at paras. 74, 76.

<sup>14</sup> *Id.* at paras. 76, 79.

<sup>15</sup> UN OHCHR, ‘UN rights experts urge lawmakers to stop “alarming” trend to curb freedom of assembly in the US’, 30 March 2017, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21464&LangID=E>.

<sup>16</sup> *Id.* See also: General Comment No. 37 at para. 4.

<sup>17</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, U.N. Doc A/HRC/31/66, 4 February 2016, at para. 26 [hereinafter HRC 31/66].

<sup>18</sup> HRC 31/66 at para 61; General Comment No. 37 at para. 85.

<sup>19</sup> General Comment No. 37 at para. 9.

Law enforcement officers should only resort to force in ‘exceptional’ circumstances.<sup>20</sup> Any use of force must only be the minimum amount necessary, targeted at specific individuals, and proportionate to the threat posed.<sup>21</sup> The restrictions on the use of force at assemblies are even more important when police use lethal force, including the use of firearms. When policing an assembly, firearms may only be used when strictly necessary to counter an imminent threat of death or serious injury.<sup>22</sup>

Rubber bullets can also be deadly. The *OHCHR Guidance on Less Lethal Weapons in Law Enforcement* states that ‘kinetic impact projectiles should generally be used only with the aim of striking the lower abdomen or legs of a violent individual and only with a view to addressing an imminent threat of injury to either a law enforcement official or a member of the public.’<sup>23</sup> Rubber bullets should not be used as a general tool to disperse protesters, nor should they be fired indiscriminately into a crowd.<sup>24</sup>

Tear gas and other ‘area weapons’ also pose risks to protesters and should only be used in response to widespread violence with the sole purpose of dispersal and as a measure of last resort after giving an audible warning and providing reasonable time for protesters and bystanders to vacate the area.<sup>25</sup> Tear gas cartridges and canisters may not be aimed at individuals or used in confined spaces.<sup>26</sup> Their use on a person who is already restrained amounts to a violation of the prohibition against torture or other cruel, inhuman or degrading treatment under international law.

According to the Human Rights Committee, states should ‘consistently promote a culture of accountability for law enforcement officials during assemblies.’<sup>27</sup> As such, it is essential that police receive adequate training to facilitate assemblies. Law enforcement officers must understand the legal framework governing assemblies, their obligation to enable peaceful assemblies, and the importance of political assemblies in a rights-respecting society. They should receive training on proper techniques to manage crowds and how to avoid escalation while responding to violence by protesters.<sup>28</sup> Any use of force must be investigated to determine whether the force was necessary and proportionate.<sup>29</sup> States have ‘an obligation to investigate effectively, impartially and in a timely manner any allegation or reasonable suspicion of unlawful use of force or other violations by law enforcement officials ... in the context of assemblies’.<sup>30</sup>

In March 2020, the UN High Commissioner for Human Rights urged all states to release ‘every person detained without sufficient legal basis, including political prisoners, and those detained for

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<sup>20</sup> HRC 31/66 at para. 57.

<sup>21</sup> *Id.* at paras. 57–58.

<sup>22</sup> General Comment No. 37 at para 88; HRC 31/66 at para. 59. See also: Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 9 and 14; Amnesty International, Dutch Section, ‘Use of Force: Guidelines for the implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials’, August 2015, section 2, available at: [https://www.amnesty.org.uk/files/use\\_of\\_force.pdf](https://www.amnesty.org.uk/files/use_of_force.pdf), [hereinafter Amnesty International, ‘Use of Force’].

<sup>23</sup> United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement, para. 7.5.8, available at: [https://www.ohchr.org/Documents/HRBodies/CCPR/LLW\\_Guidance.pdf](https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf) [hereinafter Guidance on Less Lethal Weapons].

<sup>24</sup> Amnesty International, ‘Use of Force’, section 7.4.2.

<sup>25</sup> *Id.* at para. 87.

<sup>26</sup> Guidance on Less Lethal Weapons, paras. 7.3.6-8.

<sup>27</sup> General Comment No. 37 at para. 89.

<sup>28</sup> HRC 31/66 at para. 42.

<sup>29</sup> General Comment No. 37 at para. 91.

<sup>30</sup> *Id.* at para. 90.

critical, dissenting views' in response to the COVID-19 pandemic.<sup>31</sup> By continuing to detain protest leaders despite high infection rates and overcrowding in prisons, the Thai government is unnecessarily putting their lives at grave risk.

## **Conclusion**

In order to fulfill its human rights obligations, the Thai government should not only refrain from suppressing protests but also needs to create a safe and enabling environment for members of the public to exercise their rights to peaceful assembly and freedom of expression in the context of the COVID-19 pandemic.

We call on the Thai government to ensure that law enforcement officials only resort to the use of force against protesters in full compliance with international human rights law and standards. In particular, authorities must not use greater force than necessary to achieve a legitimate objective and must not cause greater harm than the harm they seek to prevent. Any use of force must be proportionate to a legitimate law enforcement objective, such as meeting any threat of violence. We further call on your government to ensure that all law enforcement personnel present at protests have been properly trained in strategies and tactics that comply with international human rights law and standards. Authorities should promptly, effectively, impartially, and independently investigate any violations of domestic law and international standards and ensure that perpetrators are held accountable.

We further call on the Thai government to immediately end its harassment of protest leaders and participants. Individuals detained solely because of their exercise of the right to peaceful assembly, including protest leaders recently denied bail, should be immediately and unconditionally released. No one should be detained merely for exercising a human right, such as the rights to peaceful assembly or freedom of expression.

We urge you to initiate a review of all laws and policies impacting the right to freedom of peaceful assembly in Thailand. Laws and policies that unjustifiably restrict the rights to freedom of peaceful assembly and expression should be amended in line with international law and standards.

Thank you for your attention to the issues and recommendations raised in this letter. We would welcome the opportunity to assist and support the Thai government in meeting its human rights obligations.

Sincerely,

Amnesty International  
ARTICLE 19  
ASEAN Parliamentarians for Human Rights  
Asia Democracy Network  
Asian Forum for Human Rights and Development (FORUM-ASIA)  
Asian Network for Free Elections (ANFREL)  
CIVICUS: World Alliance for Citizen Participation  
Civil Rights Defenders  
FIDH – International Federation for Human Rights  
Fortify Rights  
Human Rights Watch  
International Commission of Jurists  
Manushya Foundation

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<sup>31</sup> UN High Commissioner for Human Rights Michelle Bachelet, 'Urgent action needed to prevent COVID-19 "rampaging through places of detention"', 25 March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/Display-News.aspx?NewsID=25745&LangID=E>.

CC:

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