



OPINION

Thailand faces the spotlight on human rights

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Photos of detained anti-government protesters in front of Bangkok Remand Prison. Supporters are demanding the protesters be released without condition. (Photo: Pattarapong Chatpattarasill)

Thailand faces its third major review by the United Nations Human Rights Council during the Universal Periodic Review session this November. The prosecution of protesters, and its commitments to international human rights law, are expected to face close scrutiny from states and civil society during the review process.

Recent months have seen Thai authorities shift their approach to where pro-democracy protesters are now largely being released on strict bail conditions to await trial. However, both detention and the current bail conditions fall short of international human rights law standards.

Detaining protesters for exercising fundamental freedoms is arbitrary detention violating Thailand's obligations under the International Covenant on Civil and Political Rights (ICCPR). Indeed, UN experts pointed this out in a January 2021 letter to Thailand.

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Furthermore, with Covid-19 ravaging Thailand's prisons, protesters -- held in overcrowded, unhygienic pens -- were vulnerable. Prior to their release, several of them contracted Covid-19 and were later hospitalised, including leading activist Panupong "Mike" Jadnok and human rights lawyer Anon Nampa.

Nevertheless, there is a high price to be paid for protesters' being released on bail. To secure their release, protesters must now submit to several bail conditions -- placing bail surety, wearing electronic monitoring bracelets. For instance, Mr Panupong and Mr Anon needed to place a bail guarantee of 200,000 baht each and agree to be barred from leaving Thailand or partaking in political activities.

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Other protesters, who had been charged on Section 112 and released on bail, are required to follow some conditions -- among them is not to repeat the same felonies including organising activities that might damage the monarchy, cause public unrest and participate in political protests. Yet for political activists and those who express their opinions, these conditions again mean the gag on exercising fundamental freedoms.

In addition, third parties can petition the court to withdraw their bail any time for violating bail conditions.

International law gives states broad discretion regarding criminal procedure. It also recognises a state's right to impose conditional bail, including to prevent recommitment of crimes. Nevertheless, international law tolerates limited restrictions on fundamental freedoms as it acknowledges the need to balance rights and duties. Yet this goes only so far as such limits are lawful, legitimate and wholly necessary in a democratic society.

Against the backdrop of a rising number of pro-democracy protests in recent years, the use of Section 112 has made a comeback in Thailand. UN experts on freedom of expression, assembly and association and arbitrary detention have voiced their concerns. They reiterated that under international law, public figures are legitimately subject to criticism.

Indeed, international law does not tolerate arresting, detaining and punishing people for criticising governments or public figures. It views this as a disproportionate way to protect the honour of someone whose very position and associated power would inevitably expose them to criticism.

The Thai government, like many of its regional neighbours such as Indonesia and the Philippines, has curtailed and criminalised pro-democracy protests and gatherings in recent years. This has been enabled primarily through emergency powers, officially assumed to curb the spread of the Covid-19 pandemic.

Under international law, declarations of emergencies due to Covid-19 can be valid, if fundamental freedoms are not limited beyond the lawful, legitimate and strictly necessary reasons. However, Thailand's disproportionate curtailment of fundamental freedoms due to the Covid-19 emergency is deemed unjustified under international law.

In addition, the United Nations Human Rights Committee, which interprets the ICCPR, has specifically noted that people cannot be required to pledge not to organise or participate in future peaceful assemblies.

The committee has further held that while states may impose administrative requirements on protesters, such as Thailand's requirement for 24 hours' advance notice, these must be intended to help authorities fulfil their duty to facilitate the conduct of peaceful protests. They cannot serve to stifle free assembly.

Likewise, protesters' failure to meet such administrative requirements does not strip them of their right to peacefully assemble. Protests can be inherently disruptive, and the Human Rights Committee reminds states that they need to exercise significant tolerance.

Furthermore, since Thailand's 2017 constitution specifically protects fundamental freedoms and essentially incorporates the international law standard in terms of permissible restrictions on them, the bail conditions arguably also violate Thailand's own constitution and are thus illegal.

With Thailand's third Universal Periodic Review Cycle on the horizon, the exercise of fundamental freedoms by its own populace will receive attention. Arguing for Thai exceptionalism and arbitrarily deciding which and on what condition human rights standards apply will make the Kingdom's adherence to international law inconsistent.

Dr James Gomez is Regional Director of the Asia Centre and Doreen Chen is Director of Destination Justice. Both organisations, together with the Cross-Cultural Foundation, Duay Jai Group, Human Rights Lawyers Association, Justice for Peace Foundation filed a March 24 submission 'Human Rights Defenders and Fundamental Freedoms in Thailand' for Thailand's third Universal Periodic Review in November.



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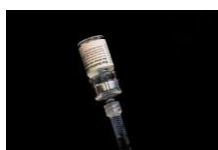
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