



Freedom of association in Thailand: an assessment of the enabling environment for civil society

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A. Introduction

Thailand is a constitutional monarchy with King Rama X as the head of state. Thailand has faced years of political instability, violent crackdowns on protesters, social division and political polarisation between the ruling conservatives and the emerging middle class and grassroots opposition supporters.

On 24 March 2019, Thailand held its first national election since the junta-led National Council for Peace and Order (NCPO) staged a military coup in May 2014. The military-backed Phalang Pracharath Party and 18 other supporting political parties won a majority in the lower house and nominated the NCPO leader and retired army general, General Prayuth Chan-ocha, as prime minister. The election was generally peaceful with few reported incidents of irregularities. However, the restrictive regulatory framework governing the election and formation of political parties and judicial harassment of the political opposition have been widely criticised.¹ Within a year of the elections, the Constitutional Court had dissolved two political opposition parties, the Future Forward Party and Thai Raksa Chart Party.²

In an effort to address the COVID-19 pandemic, on 25 March 2020, the Thai government declared a nationwide state of emergency, effective from 26 March 2020.³ The government imposed several restrictions on fundamental human rights, including the freedoms of assembly and expression. For example, regulations issued under article 9 of the Emergency Decree banned gatherings, prohibited the reporting of ‘fake news’ or the dissemination of false information on the COVID-19 outbreak and imposed a night-time curfew.⁴

Thailand’s civil society groups and social movements are diverse and vibrant. Members of civil society have organised and formed formal associations, such as non-profit organisations, foundations, professional associations, trade unions, religious organisations, international

¹ ‘Thailand: Authorities must reverse dissolution of opposition Future Forward Party’, Amnesty International, 21 February 2020, <https://www.amnesty.org/en/latest/news/2020/02/thailand-authorities-must-reverse-dissolution-of-opposition-future-forward-party/>; ‘Thailand: Court dissolves opposition party’, Human Rights Watch, 22 February 2020, <https://www.hrw.org/news/2020/02/22/thailand-court-dissolves-opposition-party>.

² On 7 March 2019, the Constitutional Court ordered the dissolution of the Thai Raksa Chart Party due to its nomination of a member of the Royal Family as a prime minister candidate. The court ruled that Thai Raksa Chart’s nomination of the princess was an act that undermines the democratic system under the constitutional monarchy. The Court said the monarchy has traditionally and constitutionally been above politics. Later, on 21 February 2020, the Constitutional Court ordered the dissolution of the Future Forward Party based on the allegations that the party took an illegal loan from its leader, Thanathorn Juangroongruangkit. The executive members of the two parties were also banned from politics for a period of 10 years.

³ Declaration of the Emergency Situation in All Areas of the Kingdom, 25 March 2020. <http://www.mfa.go.th/main/contents/files/news3-20200326-161207-994002.pdf>.

⁴ Regulation issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005) No. 1, 25 March 2020, <http://www.mfa.go.th/main/contents/files/news3-20200329-164122-910029.pdf>; Regulation issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005) No. 2, 2 April 2020, <http://www.mfa.go.th/main/contents/files/news3-20200403-172644-254060.pdf>.

organisations and cooperatives, and informal associations, such as peasant movements, student movements, grassroots networks and clubs.

Without the freedom of association, the ability of people to participate effectively in public affairs is significantly undermined. The space in which civil society groups operate has been seriously curtailed under the NCPO and military-led administrations. In 2017, the United Nations (UN) Human Rights Committee expressed concerns about Thailand's systematic use of criminal proceedings, particularly criminal defamation charges, against activists, human rights defenders and journalists.⁵ Further, the UN Committee on Economic, Social and Cultural Rights is concerned about reports of enforced disappearances and killings of environmental and land rights activists, and impunity for these crimes.⁶ Given these challenges, it is essential to assess the extent to which the legal and policy framework creates an enabling environment and the challenges that exist for civil society.

Thailand is rated as 'repressed' on the CIVICUS Monitor⁷, a research tool that provides quantitative and qualitative data on the state of civic freedoms in 196 countries. The data is generated through a collaboration with more than 20 civil society research partners and input from a number of independent human rights evaluations. Based on our analysis of multiple streams of data on civic space, each country's civic space is rated in one of five categories: 'Open', 'Narrowed', 'Obstructed', 'Restricted' and 'Closed'.

B. Methodology

This report examines the government of Thailand's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society groups. It identifies and analyses the legal and policy framework and its implementation, and the challenges these pose to the freedom of association of civil society groups. It further analyses the government of Thailand's fulfilment of the right to the freedom of association and unwarranted restrictions imposed on the operation of civil society groups and peoples' movements based on interviews, governmental and non-governmental reports and news articles. The final section of this report provides a series of recommendations.

The findings of this report are based on 15 interviews with 16 representatives of civil society groups, consisting of eight women and eight men. Those interviewed are civil society personnel and represent diverse backgrounds in relation to gender, ethnicity, religion, profession and economic status. Three interviews were conducted with representatives of labour rights groups; two interviews with representatives of rights groups focused on

⁵ 'Concluding Observations on the second periodic report of Thailand', UN Human Rights Committee, UN Doc CCPR/C/TH/CO/2, 25 April 2017, para. 35

⁶ 'Concluding Observations on the combined initial and second periodic reports of Thailand', UN Committee on Economic, Social and Cultural Rights, UN Doc E/C.12/THA/CO/1-2, 19 June 2015, para. 11.

⁷ 'Thailand', CIVICUS Monitor, October 2020.

religious minorities, e.g. Muslims in the southern border provinces; one interview with a representative of an Indigenous peoples group; one interview with a representative of a group working with people with disabilities; one interview with a representative of an LGBTQI+ group; two interviews with representatives of community-based groups and people living in poverty; and two interviews with representatives of international civil society organisations. The interview questions focused on the perceptions of civil society groups and can be found in Annex A.

All interviews were conducted in the Thai language except two, which were conducted in English. No one interviewed for this report received compensation and all interviewees were informed about the purpose of the interview, its voluntary nature and the ways in which the information shared would be used. All respondents gave their consent to be interviewed. All interviews except one were conducted by phone or via an online platform. The names of representatives of civil society groups are withheld in this report for protection of confidentiality and due to security concerns.

C. Legal Framework

International human rights treaties and the Thai Constitution specifically uphold the right to the freedom of association in Thailand. Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and article 8 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), to both of which Thailand is a state party, guarantee the rights to the freedom of association and to form, join and operate trade unions. ICCPR article 22 states that: “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

Thailand participated in both the first and the second cycle of the UN Human Rights Council Universal Periodic Review (UPR) in October 2011 and May 2016. During the first cycle, the government of Thailand received a total of 183 recommendations, 134 of which it accepted and 49 it rejected. During the second cycle, Thailand received a total of 249 recommendations, of which 187 were accepted and 62 rejected.

Recommendations received by Thailand and voluntary commitments on the freedom of association and an enabling environment for civil society under the Universal Periodic Review⁸

Thailand received several recommendations on the promotion and protection of the freedom of association and the creation of an enabling environment for civil society. However, most of these recommendations were noted rather than accepted by the government. Two voluntary pledges were made to uphold these rights.

Recommendations

- Propose concrete dates for visits by the Special Rapporteurs on freedom of opinion and expression, and freedom of association and assembly, respectively (Noted);
- Ensure that the right to freedom of opinion is respected, including by reviewing article 112 of the Penal Code, and ensure a safe environment that promotes the rights of all people to freely associate and assemble without hindrances (Noted);
- Guarantee and respect the right to freedom of expression, association and assembly, putting an end to arbitrary detentions and arrests and any act of harassment against political actors and civil society, including human rights defenders (Noted);
- Immediately end all infringement on the rights to freedom of expression, association and peaceful assembly under section 44 of the 2014 interim Constitution, the Computer Crimes Act, and articles 112 and 116 of the Penal Code and unconditionally release persons detained or imprisoned for exercising these rights (Noted);
- Issue a standing invitation to all Special Procedures and establish a calendar (Accepted);
- Engage civil society in the follow-up implementation process of the Universal Periodic Review recommendations (Accepted);
- Enable the participation of civil society and NGOs also in the follow-up process to this review (Accepted);
- Translate into Thai and make public the recommendations received during its UPR and broadly engage civil society in the process of follow-up and implementation of accepted recommendations (Accepted);
- Remove undue restrictions and infringements to the enjoyment of freedoms of expression, association and peaceful assembly (Noted);
- Engage in a review of special security laws, with a view to amending legislation and regulations which restrict or deny freedoms of expression, association and peaceful assembly that are inconsistent with obligations under international law, including the Internal Security Act, the Computer Crimes Act, the Emergency Decree, the Official Information Act, and lèse-majesté provisions (Noted);

⁸ 'Report of the working group on Universal Periodic Review: Thailand', UN Human Rights Council, UN Doc A/HRC/19/8, 8 December 2011; 'Report of the working group on Universal Periodic Review: Thailand, Addendum', UN Human Rights Council, UN.Doc A/HRC/19/8/Add.1, 6 March 2012; 'Report of the working group on Universal Periodic Review: Thailand', UN Human Rights Council, UN Doc A/HRC/33/16, 15 July 2016; 'Report of the working group on Universal Periodic Review: Thailand, Addendum', UN Human Rights Council, UN Doc A/HRC/33/16/Add.1, 7 September 2016.

- Ensure, through legislative reforms, that protection and promotion of laws of freedom of expression as well as of peaceful assembly and association are guaranteed for all inhabitants of the country (Noted);
- Issue a standing invitation to all Special Procedures (Accepted);
- Ensure that its legislation is consistent with international human rights law pertaining to freedom of expression (Accepted);
- Ensure public and transparent proceedings in cases concerning violations of the lèse- majesté legislation and the 2007 Computer Crimes Act (Accepted);
- Strengthen efforts to ensure adequate legal counselling for all persons charged for violations of the lèse-majesté legislation and the 2007 Computer Crimes Act (Accepted);
- Promote a culture of equality through the equal participation of all members of society and, in particular the participation of women in rural areas (Accepted);

Voluntary pledges and commitments

- Thailand pledged to become a party to the Convention for the Protection of All Persons from Enforced Disappearance, International Labour Organization (ILO) Conventions No. 87 on Freedom of Association and Protection of the Right to Organise and No. 98 on the Right to Organise and Collective Bargaining;
- Thailand pledged to promote cooperation with civil society and the international community in the follow-up to the implementation of the National Human Rights Plan and the recommendations from the first cycle.

Section 42 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) upholds the right to the freedom of association, stipulating that “a person shall enjoy the liberty to unite and form an association, co-operative, union, organisation, community, or any other group.” However, this freedom may be subject to a restriction prescribed under “the law enacted for the purpose of protecting public interest, for maintaining public order or good morale, or for preventing or eliminating barriers or monopoly.”⁹ The restrictions to this right allowed under the Constitution are slightly different from the grounds permitted by international laws, such as those preventing and eliminating trade barriers or economic monopoly.

The following national legislation has been identified as commonly being used to regulate the registration, governance and operation of formal associations, including foundations, associations and trade unions:

1. The Civil and Commercial Code and relevant ministerial regulations under the Ministry of Interior (MOI) and the Ministry of Labour (MOL);
2. The Labour Relations Act B.E. 2518 (1975) and relevant ministerial regulations;
3. The State Enterprise Labour Relations Act B.E. 2543 (2000) and relevant ministerial regulations.

⁹ Constitution of the Kingdom of Thailand B.E. 2560 (2017), section 42.

These national laws contain several legal provisions that are problematic or pose challenges to the formation and operation of civil society groups. The selective and discriminatory enforcement of these laws increase procedural, financial and public perception challenges to the operations of civil society. Although these national laws provide critical protection measures, they are limited and rarely enforced or interpreted in the interest of civil society.

I. Civil and Commercial Code

The Department of Provincial Administration under the MOI categorised non-profit organisations (NPOs) operating in Thailand into two groups:

- (1) NPOs with legal entity, commonly registered as foundations and associations with charitable objectives. As of April 2019, there were 13,572 foundations and 12,973 associations registered with the Department of Provincial Administration.¹⁰
- (2) NPOs without legal entity, meaning that the organisation is not registered with the authorities and operates in an individual capacity.

The Order Maintenance Division 2 of the Department of Provincial Administration encourages NPOs to register formally, for the benefit of tax exemption and financial transparency and to reduce the risks of engaging in money laundering and providing financial resources to terrorist groups.¹¹ Based on the interviews conducted with key informants, local civil society groups in Thailand register as a foundation or association. However, the majority of Thai CSOs are not registered with the authorities due to legal and administrative barriers which will be discussed in the following section.

Sections 78 to 109 of the Civil and Commercial Code recognise the legal status of an association which is set up by a group of at least three founding members for the purpose of conducting any activity with a specified goal that is not contrary to the law and is carried out continuously and collectively, without the objective to share any profit or income arising from such activities. The law requires at least 10 individual members for the first meeting of an association. The registration does not require an initial investment or assets, but the objective of an association cannot be contrary to the law and public morals or undermine public order and national security.¹²

In addition, section 82 of the Civil and Commercial Code emphasises that the registrar official has the power to consider the status and behaviour of the proposed board members of an association. If the status or behaviour of the proposed board members are deemed inappropriate or unsuitable for the objective or the operation of an association, the registrar

¹⁰ 'Do you know what the advantages of registration as a foundation or an association are?', Ministry of Interior, Department of Provincial Administration, 6 September 2019, <https://multi.dopa.go.th/omd2/news/cate1/view17>.

¹¹ Ibid.

¹² Civil and Commercial Code, section 82.

can reject the application of the board members.¹³ The board members are responsible for the legal representation and operation of the association, as well as the holding of an annual general assembly.

Registrar offices are available at the provincial level, usually under the provincial governors. For Bangkok the registrar office is the Permanent Secretary of the MOI, but every foundation and association registered in Thailand has to send their documents to Bangkok for verification.

An association is required to notify the government of its first initial meeting and its annual general assembly.¹⁴ The law requires associations to send a list of their board members to the government and apply for the registration and approval of their board members.¹⁵

Under section 102 of the Civil and Commercial Code, the registrar is authorised to withdraw the name of an association from the registration database, which results in the dissolution of an association. A registrar can cancel an association's name on the grounds that the association's objectives or the operations are contrary to the law and public morals or are undermining public order and national security.¹⁶ The registrar can exercise this authority without judicial oversight. The board members of an association can appeal against this decision to the Minister of Interior.¹⁷

A foundation in Thailand is described in sections 110 to 136 of the Civil and Commercial Code as a legal entity set up to support charity, religion, science, art, literature, education, or any public interest. The law requires a minimum of three founding members to register a foundation, at least one of whom must be a Thai national.¹⁸

The law also designates broad authority to the registrar official to accept or reject a foundation's registration and the appointment of board members.¹⁹ A registrar or a public prosecutor can submit a request to dissolve a foundation to the court based on the grounds that a foundation has carried out its operation contrary to the law and public morals, or is undermining public order and national security.²⁰ A request for dissolution of a foundation is examined and decided upon by a judge.²¹

The registrar also has "the power to inspect, control and supervise the carrying out of the activities of the foundation in conformity with the law and the regulations of the

¹³ Ibid.

¹⁴ Ibid., section 93.

¹⁵ Ibid., section 85.

¹⁶ Ibid., sections 101 and 102.

¹⁷ Ibid., section 103.

¹⁸ 'A Manual on operating foundations and associations', Ministry of Interior, Department of Provincial Administration, 2018,

https://multi.dopa.go.th/omd2/assets/modules/work_manual/uploads/4dec5a02dabec8107c62e91ddc41f0b65c52c51338ee8348121831470391220.pdf.

¹⁹ Civil and Commercial Code, section 115.

²⁰ Ibid., section 131.

²¹ Ibid., section 132.

foundation.”²² The registrar can order a foundation to provide accounting books, explanations and other documents, or summon individuals for questioning concerning the operation of a foundation.²³ The provision also authorises the registrar to enter the offices of a foundation between sunrise and sunset for inspection.²⁴

The MOI has prescribed the rules and regulations that apply to the establishment of a foundation in Thailand. The MOI’s regulations require a minimum financial investment or assets for the registration of a foundation.²⁵ The regulations further require foundations to submit annually a list of names of board members, an annual activity report, an audited financial report and minutes of board meetings.²⁶

Traditionally, foundations and associations were advised to declare in their objectives that they will not engage in political activity. However, according to a 4 August 1992 Cabinet Resolution, foundations and associations are permitted to engage in limited political activities by “contributing to activities that promote and support a constitutional monarchy regime, maintaining neutrality and cannot provide any financial resources or assets to a politician or a political party.”²⁷ This provision must be included in the objective of the organisation.

II. The Labour Relations Act B.E. 2518 (1975) and the State Enterprise Labour Relations Act B.E. 2543 (2000)

Workers’ rights to form a trade union and engage in collective bargaining with their employers are guaranteed under ILO Conventions 87 and 98, both of which Thailand has not ratified despite its voluntary pledge during its first UPR in October 2011.²⁸

The Labour Relations Act (LRA) and the State Enterprise Labour Relations Act (SELRA) are two national laws governing the establishment of trade unions and collective bargaining relationships between employers and employees in the private sector and state-owned

²² Ibid., section 128.

²³ Ibid.

²⁴ Ibid.

²⁵ For example, the initial investment requirement for a foundation is at either 250,000 Baht or 500,000 Baht (approx. US\$7,900 and approx. US\$15,800) depending on the objective for which a foundation is being incorporated, whereby part of the investment must be evidenced in cash while another part may be evidenced in the form of assets. For a foundation set up for charitable activities to promote education, sport, religion, disaster prevention, treatment, research, or prevention of HIV/AIDS and drug abuses, or that is established by government agencies, 200,000 Baht (approx. US\$6,300) of cash or investment plus 100,000 Baht (approx. US\$3,200) of cash is required for registration. See Letter No. Mor Thor 0402/ Wor 1548, Ministry of Interior, 19 September 1991; Letter No. Mor Thor 0402/ Wor 2073, Ministry of Interior, 18 December 1991.

²⁶ ‘Regulations on a registration, operation and a database of a foundation B.E. 2545’, Ministry of Interior, 30 July 2002.

²⁷ Cabinet Resolution on the amendment of rules and regulations on a registration of foundation, association and charity organisation, 4 August 1992.

²⁸ Thailand made a voluntary pledge to “become a party to the Convention for the Protection of All Persons from Enforced Disappearance, ILO Conventions No. 87 on Freedom of Association and Protection of the Right to Organise and No. 98 on the Right to Organise and Collective Bargaining,” on 12 October 2011. See UPR info Database, <https://upr-info-database.uwazi.io/en/entity/ooci3tdksyq?searchTerm=thailand>.

enterprises.²⁹ Currently, there is no national law upholding the rights to organise and bargain for civil servants, government employees and workers in the agricultural and other informal sectors.

LRA and SELRA allow workers in the private business sector and in state-owned enterprises to formally register trade unions, labour federations and labour congresses. Employers are also permitted to form employers' associations and employers' federations. This report will only focus on the freedom of association of workers.

According to the Department of Labour Protection and Welfare of the MOL, as of May 2020, there were 48 state enterprise trade unions with 172,477 members and 1,408 private trade unions with 457,010 members. There is one state enterprise trade union federation, 21 private trade union federations and 15 trade union congresses. Out of the 1,408 private trade unions, 560 are unions limited to employees of one company and 848 are industrial trade unions.³⁰ One hundred unions represent workers at management level and 1,308 represent workers at the operational level.³¹

The ILO estimated a trade union density rate of 3.5 per cent in Thailand in 2016.³² There are over 17 million workers in the formal labour force,³³ but only around 620,000 are members of trade unions.³⁴ The low trade union density rate is a result of several factors, including resistance from employers, restrictive laws, administrative and bureaucratic registration procedures and a lack of respect for workers' rights.

Trade union registration

All trade unions must be registered with the registrar official, the Director-General of the Department of Welfare and Labour Protection.³⁵ The objectives of a trade union are to represent and protect interests relating to the state of employment and to promote good relationships between employers and employees, and among employees themselves.³⁶ A member of a trade union cannot be a member of a second union. The LRA requires that at least 10 employees apply for a trade union registration. They must be employed by the same employer, or employed in a business of the same nature, regardless of the number of employers, and be a Thai national.³⁷ The 10 employees who have the right to establish a trade

²⁹ A state enterprise is a commercial entity in which the Thai government holds a majority of ownership, such as the electricity, railway and postal services.

³⁰ Industrial unions cover several companies within the same industry.

³¹ 'Numbers of labour organisations in Thailand', Ministry of Labour, Department of Labour Protection and Welfare, May 2020, <http://relation.labour.go.th/2018/attachments/category/107/669-0001.pdf>.

³² Statistics on union membership, ILO, <https://ilostat.ilo.org/topics/union-membership>.

³³ Labour Statistics, Official of National Statistics, <http://statbbi.nso.go.th/staticreport/page/sector/en/02.aspx>.

³⁴ 'Numbers of labour organisations in Thailand', op. cit.

³⁵ Labour Relations Act B.E. 2518 (1975), section 89.

³⁶ Ibid., section 86.

³⁷ Ibid., section 88.

union must submit an application containing articles of association, name, age, occupation and address to the registrar.³⁸

Under the LRA, a trade union is able to (1) demand and negotiate for settlements and acknowledge agreement with an employer or employers' association regarding the activities of its members; (2) manage and carry out activities for the benefit of its members; (3) provide information regarding employment opportunities for its members; (4) provide advisory services for resolving problems or eliminating disagreements relating to administration and working methods; (5) provide welfare services relating to the allocation of funds or properties for its members or for the public benefit; and (6) collect membership fees.³⁹

A state enterprise trade union has an additional objective, which is "to act or provide cooperation for enhancing the efficiency and maintaining the interest of a state enterprise."⁴⁰ Each state enterprise can have only one trade union.⁴¹ To register, SELRA requires at least 10 employees who are not part of management, are Thai nationals and are employed by the same state enterprise. They must submit the articles of association and their name, age, occupation and address to the registrar.⁴² In addition, SELRA requires founders to submit a list of names of at least 10 per cent of employees who wish to be a member when registering.⁴³

Trade union membership

Members of a trade union in the private sector must be currently employed by the same employer or employed in a business of the same nature.⁴⁴ However, an employee who is "a superior or an executive with the power to hire, reduce wages, dismiss the employment, take disciplinary or reward actions cannot become a member of a trade union established by other employees."⁴⁵ They are permitted to establish a separate trade union.

Members of a state enterprise trade union must be currently employed by the same state enterprise. Members must constitute no less than 25 per cent of the total employees but this does not include employees engaged in work characterised as being occasional, contingent, seasonal, or project work.⁴⁶ Members who are superiors or in a management positions cannot become a member of a state enterprise union.⁴⁷

³⁸ Ibid., section 89.

³⁹ Ibid., section 98.

⁴⁰ State Enterprise Labour Relations Act B.E. 2543 (2000), sections 6 and 40.

⁴¹ Ibid., section 40.

⁴² Ibid., sections 41 and 43.

⁴³ Ibid., section 43.

⁴⁴ Labour Relations Act, op. cit., section 95.

⁴⁵ Ibid.

⁴⁶ State Enterprise Labour Relations Act, op. cit., section 42.

⁴⁷ Ibid., section 51.

Responsibilities of trade unions

All trade unions and state enterprise trade unions must provide a registration list of all its members, keep the registration list at its office and make it available for inspection when required.⁴⁸ All trade unions must declare their working hours. They must arrange for annual accounting audits and submit a balance sheet with the audit report to the general assembly of the trade union for endorsement and submit a copy to the registrar official.⁴⁹

The LRA protects a trade union, its board members, its sub-committee members and its staff members, by exemption from criminal and civil prosecution, when they engage in the following activities: (1) negotiate with an employer to discuss labour rights claims and employment conditions; (2) cause, assist, persuade, or encourage a strike by its members; (3) explain and publish facts about labour disputes; (4) arrange for a rally or peaceful gatherings for strike.⁵⁰ Nevertheless, these individuals are not protected from criminal charges when engaging in activities constituting criminal offences, such as endangering public safety, offences against life and body, offences against liberty and reputation and offences against property.⁵¹

Similar protections are listed in SELRA for state enterprise trade unions. Board members, sub-committee members and staff members are exempted from civil and criminal prosecution when they engage in (1) negotiations with an employer to discuss labour rights claims and employment conditions and (2) explaining or publishing facts about the operation of the trade union and labour disputes.⁵² SELRA contains similar exceptions to the LRA, in that board members, sub-committee members and union staff may be liable to criminal prosecution if they engage in activities on the same grounds as in LRA.⁵³

A registrar official can (1) enter a trade union office for inspection; (2) order trade union board members and staff to submit documents or provide testimony; and (3) question or summon board members and staff on the conduct of trade union activities.⁵⁴

While section 22 and 99 of the LRA permit a trade union in the private sector to engage in a strike, sections 33 and 34 of SELRA impose serious restrictions by prohibiting state enterprise workers and state enterprise trade unions from organising a strike.⁵⁵

⁴⁸ Labour Relations Act, op. cit., section 104; State Enterprise Labour Relations Act, op. cit., section 60.

⁴⁹ Labour Relations Act, op. cit., section 108; State Enterprise Labour Relations Act, op. cit., section 61.

⁵⁰ Labour Relations Act, op. cit., section 99.

⁵¹ Ibid.

⁵² State Enterprise Labour Relations Act, op. cit., section 58.

⁵³ Ibid.

⁵⁴ Labour Relations Act, op. cit., section 105.

⁵⁵ Labour Relations Act, op. cit., sections 22 and 99; State Enterprise Labour Relations Act, op. cit., sections 33 and 34.

Protection measures

Sections 34 and 35 of SELRA and sections 121 to 127 of the LRA adopt specific protection measures for board members, staff and representatives of trade unions and state enterprise labour unions by prohibiting employers from conducting “unfair practices” such as the termination of employment of trade union representatives and board members while under collective bargaining agreements, discouraging employees from engaging in a trade union, or obstructing or intervening in the business of trade unions and state enterprise unions.⁵⁶ These legal provisions are positive examples of how a state can proactively enact protection measures against retaliation by employers and to protect workers’ rights to the freedom of association. However, these legal protections are often not enforced to protect workers and trade union leaders from retaliation by employers or have been interpreted by the courts to favour employers. For example, these legal protections do not apply to workers who are in the process of establishing a trade union.

D. Challenges to the enjoyment of the right to the freedom of association among civil society groups

I. Challenges to the enjoyment of the right to the freedom of association among registered and non-registered civil society groups

State officials often label critics, rights activists and civil society organisations (CSOs) in Thailand as ‘radical’, ‘anti-development’, or ‘acting as a foreign agent’.⁵⁷ Since the military coup in 2014, Thai authorities have undertaken surveillance and have put increasing pressure on local and international CSOs, particularly organisations working on civil and political rights. Despite this, the Thai government has persistently denied any allegations of reprisals and intimidation against human rights activists.⁵⁸

The following section examines three main challenges to the registration and operation of civil society groups in Thailand, namely, legal and administrative barriers, lack of access to funding and resources and restrictions imposed on civil society operations.

(1) Legal and administrative barriers in registration

Although in Thailand registration is not mandatory for all associations, formal registration procedures are sometimes burdensome and bureaucratic, requiring significant administrative

⁵⁶ Labour Relations Act, op. cit., sections 121 to 127; State Enterprise Labour Relations Act, op. cit., sections 34 to 35.

⁵⁷ ‘Prime Minister urged NGOs to distribute correct information to the people’, Post Today, 24 March 2017, <https://www.posttoday.com/politic/news/486778>.

⁵⁸ ‘Foreign Ministry rebuts UN human rights report denouncing Thailand’, Thai PBS World, 15 September 2018, <https://www.thaipbsworld.com/foreign-ministry-rebuts-un-human-rights-report-denouncing-thailand>.

information and financial resources. These extensive legal and administrative requirements may impede the registration and operation of civil society groups.

Human rights organisations such as Amnesty International Thailand (AI Thailand), pro-democracy groups, student networks and labour groups were subject to multiple forms of intimidation and restrictions for carrying out their work during the NCPO administration. Internet Law Reform Dialogue (iLaw), a human rights organisation promoting democracy and the freedom of expression, documented that between 2014 and 2018, Thai authorities intervened or banned at least 200 public events organised by civil society groups, such as student, academic, grassroots and labour networks, to promote democratic reform or discussions on human rights issues.⁵⁹ For example, in September 2016, Thai police threatened to arrest two employees of Amnesty International who participated in the launch of a report documenting allegations of torture committed by security forces in Thailand. AI Thailand was pressured to cancel the event.⁶⁰ In July 2018, Thai police banned screening of a film on the persecution of a blogger in Vietnam, citing that they had received a complaint from the Vietnamese Embassy.⁶¹ In August 2018, AI Thailand was pressured by Thai authorities to cancel the screening of a film on a pro-democracy student activist in Hong Kong.⁶²

Additionally, Thai authorities have invoked powers under section 82 of the Civil and Commercial Code to obstruct the registration of AI Thailand. On 9 November 2018, a Bangkok registrar official denied an application by Mr Netiwit Chotiphathaisan to become a new committee member of AI Thailand, which is registered as an association, citing his “improper demeanour or the lack of qualification to be a member of the committee.”⁶³ The organisation appealed against the decision and received a letter from the MOI dated 16 May 2019 explaining that the registrar had received information from the police’s Special Branch Bureau that Mr Chotiphathaisan faced four criminal charges for violating NCPO Order No. 3/2558, which bans political gatherings of more than five people. According to the authorities his behaviour was deemed “contrary to the objective of the association and demonstrates a negative role model for the youth.” Further, it was considered that his behaviour was “inappropriate” and may “undermine public order and national security.”⁶⁴ On 25 September 2019, the MOI rejected AI Thailand’s on the Mr Chotiphathaisan’s application to join as a

⁵⁹ ‘Statistics on the bans and interferences of public activities during the NCPO administration’, Internet Law Reform Dialogue, September 2018, <https://freedom.ilaw.or.th/blog/banonpublicactivities>.

⁶⁰ ‘Amnesty Thailand’s torture allegations spark arrest threat’, Associated Press, 28 September 2016. <https://apnews.com/962997c82b6847f1a7cecc89592330a8>.

⁶¹ ‘Film screening cancelled in Bangkok after Vietnam complains’, Bangkok Post, 4 July 2018, <https://www.bangkokpost.com/thailand/general/1497414/film-screening-cancelled-in-bangkok-after-vietnam-complains>.

⁶² Internet Law Reform Dialogue, September 2018, op. cit.

⁶³ ‘Explanation about the case that the Bangkok Association Registrar (Director General of Department of Provincial Administration) has officially refused to allow Mr. Netiwit Chotiphathaisan to sit as a board member of Amnesty International Thailand’, Amnesty International Thailand, 25 September 2019, <https://www.amnesty.or.th/en/latest/news/748>.

⁶⁴ Letter No. Mor Thor 0307.5/12277, Ministry of Interior, Department of Provincial Administration, 16 May 2019.

committee member.⁶⁵ In October 2019, AI Thailand filed an administrative lawsuit contesting the legality of the MOI decision.⁶⁶

Under the NCPO administration, the registrar official and the police Special Branch Bureau increasingly monitored the activities of organisations that had already completed registration, summoned their representatives and requested visits to their offices.⁶⁷

International non-governmental organisations (INGOs) have been monitored and regulated by Thai authorities. The MOL published a ministerial regulation on the operation of INGOs in Thailand, B.E. 2541 (1998), and a Regulation of the Committee to review the operation of INGOs, B.E. 2543 (2000), which regulates the registration, operation and establishment of regional offices of an INGO. An INGO must obtain a permit to operate from the national committee on the operation of INGOs, which is chaired by the MOL. An operational permit is subjected to review every two years.⁶⁸ INGOs must report on their activities every six months and their activities cannot contravene public order or public morals or undermine national security or foreign relations with other countries.⁶⁹ A foreign worker who wishes to work with an INGO must obtain a work permit; the national committee on the operation of INGOs, determines how many of these are given.⁷⁰ The regulation also authorises members of the national committee to conduct field visits and inspect the offices and activities of INGOs and to consult with national security agencies to cross-examine the profile and behaviour of employees of an INGO.⁷¹

These procedures and requirements are used in some cases to deter the operation of INGOs, particularly those working on civil and political rights. Based on interviews with representatives of INGOs, authorities have increased their monitoring activities and in some cases invoked the regulations on work permits for foreign workers to deter their operations and activities.⁷² Several INGOs experienced significant delays in renewing their operation permits and obtaining work permits for their foreign staff members.⁷³ As observed by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the reporting requirements and “a periodic renewal of operating license, or even threats of

⁶⁵ Letter No. Mor Thor 0307.5/25503, Ministry of Interior, Department of Provincial Administration, 23 September 2019.

⁶⁶ Amnesty International Thailand, 25 September 2019, op. cit.; interview with two representative of civil society groups, 19 and 21 May 2020.

⁶⁷ Interview with a representative of a civil society organisation, 21 May 2020.

⁶⁸ A ministerial regulation on the operation of an international non-governmental organization in Thailand B.E. 2541 (1998), articles 10,11 and 16.

⁶⁹ Ibid., articles 14 and 21.

⁷⁰ Ibid., article 15.

⁷¹ A Regulation of the Committee to review the operation of the non-governmental international organisations B.E. 2543 (2000), articles 11 and 12.

⁷² Interview with representative of civil society group, 21 May 2020.

⁷³ Interviews with representatives of three civil society groups, 21 May 2020 and 17 June 2020.

deregistration can function as a control measure for States over civil society actors” and may affect the full functionality of their organisations.⁷⁴

Based on these interviews, INGOs shared common concerns that the process to comply with government reporting requirements and the process of renewing operating licences is bureaucratic, burdensome, time-consuming and requires a substantive amount of resources. A small organisation with limited resources will have difficulties fulfilling these requirements.⁷⁵

(2) Access to funding and other resources

Local civil society groups face a variety of challenges when deciding to register formally. Support and advice from specialised lawyers have helped facilitate and expedite the registration process.⁷⁶ Civil society groups with legal knowledge and financial resources rarely experience difficulties during the registration process.⁷⁷

Meanwhile, representatives of civil society groups working with people living in poverty such as small-scale farmers, people living in urban poverty and excluded groups such as Indigenous people, migrant workers and ethnic and religious minorities from the southern border provinces stated that the lack of resources to meet the requirements for the initial financial investment under the MOI’s ministerial regulations poses a key challenge to local civil society groups that want to register as a foundation with the authorities.⁷⁸

Several unregistered civil society groups identified the lack of resources, including financial resources, human resources and lack of legal and technological knowledge, as major obstacles in carrying out their work.⁷⁹ In particular, Indigenous and rural communities living in remote areas often have difficulties in communicating with their members as they are unable to access telephone networks, electricity and transport.⁸⁰ Due to a lack of financial resources and regular budgets, their work is carried out on a voluntary basis. Their lack of paid staff members affects the efficiency of their operations.⁸¹

Some civil society groups, such as those working with people living in poverty, prefer to continue working as informal networks in order to focus their efforts and resources on expanding and strengthening their grassroots networks.⁸² They explained that with or without legal status their groups have continuously advocated and dialogued with Thai

⁷⁴ ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association’, UN General Assembly, UN Doc A/74/349, 11 September 2019. para.51.

⁷⁵ Interviews with representatives of three civil society groups, 21 May 2020 and 17 June 2020.

⁷⁶ Interview with a representative of a civil society group, 2 June 2020.

⁷⁷ Interviews with representatives of four civil society groups, 19, 27 and 29 May 2020 and 2 June 2020.

⁷⁸ Interviews with representatives of four civil society groups, 20, 21, 27 and 29 May 2020; interview with representatives of two civil society groups, 11 June 2020.

⁷⁹ Interviews with representatives of two civil society groups, 27 and 29 May 2020; interviews with representatives of two civil society groups, 11 June 2020.

⁸⁰ Interviews with representatives of two civil society groups, 27 May 2020 and 11 June 2020.

⁸¹ Ibid.

⁸² Interview with a representative of a civil society group, 29 May 2020.

authorities on issues such as the right to housing, social welfare, access to healthcare and the rights of people with disabilities.⁸³ As a representative of a civil society group working with people living in poverty observed, “Our strength lies in our ability to mobilise people to take joint action. This is our negotiation leverage when we advocate with the authorities.”⁸⁴

(3) Restrictions, threats, and intimidation

Thai authorities have often enforced other restrictive laws and orders to curb both online and offline activism by civil society groups and government critics.⁸⁵ The authorities have used a variety of legal provisions, including NCPO orders, criminal defamation and sedition charges, the Computer Crimes Act (CCA) B.E. 2560 (2017), the Public Assembly Act B.E. 2558 (2015) and the Act on the Maintenance of the Cleanliness and Orderliness of the Country B.E. 2535 (1992), to restrict the rights to the freedoms of peaceful assembly and expression of civil society members.⁸⁶ These rights are indivisible and instrumental to the exercise of the right to the freedom of association. Members of CSOs should be able to gather, discuss and express their opinions in order to organise effectively without fear of retaliation and prosecution.

According to interviews with representatives of civil society groups, security forces, including the police and military, have engaged in intimidation and harassment in order to obstruct their activities and operation. For example, security forces often conduct both announced and unannounced visits to the offices of civil society groups, especially those working on civil and political rights.⁸⁷ Under the NCPO administration, leaders of CSOs working on civil and political rights and land and housing rights were summoned and subjected to arbitrary detention commonly known as ‘attitude adjustment’ sessions.⁸⁸ A local organisation was accused by authorities of being involved in money laundering from foreign countries and the authorities threatened to remove the organisation’s registration if it continued to advocate for civil and political rights.⁸⁹

In another case, a student activist shared that security forces used both physical and psychological intimidation and harassment, such as verbal threats, daily surveillance and criminal prosecution, to foster a climate of fear among young people and their parents in order to curtail their participation in activism.⁹⁰ Members of civil society groups have been

⁸³ Interviews with representatives of two civil society groups, 29 May 2020; interview with a representative of a civil society group, 2 June 2020.

⁸⁴ Interview with a representative of a civil society group, 29 May 2020.

⁸⁵ ‘Thailand: “They are always watching.” Restricting freedom of expression online in Thailand’, Amnesty International, 23 April 2020, <https://www.amnesty.org/en/documents/asa39/2157/2020/en>.

⁸⁶ ‘Restrictions and harassments remain: Public assemblies in January before the election’, Thai Lawyers for Human Rights, 6 February 2019, <https://www.tlhr2014.com/?p=10794&lang=en>; ‘As if the NCPO never left: six years after the coup and the persistence of human rights violations’, Thai Lawyers for Human Rights, 22 May 2020, <https://www.tlhr2014.com/?p=17808&lang=en>.

⁸⁷ Interviews with representatives from three civil society groups, 21 and 27 May 2020,

⁸⁸ Interviews with representatives from two civil society organisations, 27 and 29 May 2020.

⁸⁹ Interview with a representative from a civil society group, 21 May 2020.

⁹⁰ Interview with a student activist, 19 May 2020.

labelled as ‘radical’ and ‘traitors’. These public attitudes against the operation of civil society groups often led to activists and human rights defenders becoming isolated and marginalised.

According to desk research and interviews conducted with civil society representatives, another frequent and common tactic linked to the security forces are ‘information operation’ campaigns against activists and CSOs.⁹¹ Individual activists have faced increasing online harassment, including a systematic distribution of disinformation against them or their organisations. They are often accused of ‘working for foreigners’, ‘supporting criminals’ and ‘treason’, and of being ‘extremist organisations’, ‘radical groups’ and ‘illegal groups’.⁹²

Civil society groups working with ethnic and religious minorities in the southern border provinces expressed concerns that online misinformation attacks and hate messages exacerbated social and religious divisions between local communities.⁹³

Women human rights defenders are particularly vulnerable to attacks as they face derogatory and dehumanising online harassment based on their gender.⁹⁴ Women human rights defenders, particularly those advocating for the rights of the survivors of torture and working on enforced disappearances and the protection of civil and political rights in the southern border provinces, have been subjected to online intimidation, harassment and death threats, as documented by the UN Special Rapporteur on violence against women, its causes and consequences; the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the UN Special Rapporteur on the situation of human rights defenders in September 2017 and the and the Working Group on the issue of discrimination against women in law and in practice.⁹⁵ Activists targeted include Anchana Hemmina, Pornpen Kongkajornkiet and Angkhana Neelapaijit.

⁹¹ ‘Opposition alleges army behind cyber attack on critics, hold PM responsible’, Thai PBS World, 26 February 2020, <https://www.thaipbsworld.com/opposition-alleges-army-behind-cyber-attacks-on-critics-holds-pm-responsible/>; ‘ISOC says ‘cyber war’ only on fake news’, Bangkok Post, 28 February 2020. <https://www.bangkokpost.com/thailand/general/1867154/isoc-says-cyber-war-only-on-fake-news>.

⁹² Interviews with representatives from five civil society groups, 19, 21, 27 and 29 May 2020 and 11 June 2020.

⁹³ Interviews with representatives of two civil society groups, 27 May 2020, and 11 June 2020.

⁹⁴ ‘In harm’s way: Women human rights defenders in Thailand’, Observatory for the Protection of Human Rights Defenders, Protection International (PI), and the Asia Pacific Forum on Women, Law and Development (APWLD), July 2017, https://www.fidh.org/IMG/pdf/thailand_report_-_in_harm_s_way_-_women_human_rights_defenders_in_thailand.pdf

⁹⁵ ‘Communication from the Special Procedures of the UN Human Rights Council to Thailand’, Office of the UN High Commissioner for Human Rights (OHCHR), UN Doc. AL THA 6/2017, 13 September 2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23325>

II. Challenges to the enjoyment of the right to freedom of association among trade unions and the labour rights movement

(1) Legal and administrative barriers in registration

Thailand has not ratified ILO Conventions 87 and 98 on the right to association, the right to organise and the right to engage in collective bargaining. Workers' rights to organise and collectively bargain with employers are shunned by the authorities and most businesses. Approximately 75 per cent of Thailand's approximately 38.3 million workers are not guaranteed the right to the freedom of association and collective bargaining under law.⁹⁶

Thai laws allow limited forms of the right to the freedom of association and collective bargaining, falling short of international standards. Thai law restricts the rights to the freedom of association and collective bargaining for many classes of workers. For example, as noted by the UN Human Rights Committee, non-Thai nationals, workers in 'public organisations' and educational personnel in private and public universities do not have the right to form trade unions.⁹⁷ The Civil Service Act forbids all public sector workers and civil servants, at any level of government, from organising unions or engaging in collective bargaining. This includes healthcare providers, teachers and administrative employees.⁹⁸ Agricultural workers, seasonal workers and workers in the informal economy, who account for over half of Thailand's workforce, also have no guaranteed rights to form unions or bargain collectively.⁹⁹

Section 88 of the LRA prohibits non-Thai nationals from establishing a trade union.¹⁰⁰ Additionally, section 101 of the LRA does not allow non-Thai nationals to be elected as board members of a trade union.¹⁰¹ As highlighted by a report by the International Labour Rights Forum, this means that almost four million migrant workers in Thailand are not permitted to establish a trade union and face limitations in joining existing unions or engaging fully in collective bargaining processes.¹⁰²

Section 41 of SELRA also prohibits non-Thai nationals from registering a state enterprise labour union. Sections 42 and 43 of SELRA exclude temporary, seasonal and project-based workers employed by a state enterprise from membership of a state enterprise labour

⁹⁶ National Statistical Office, Ministry of Information and Communication Technology, 2016, http://web.nso.go.th/en/survey/lfs/data_lfs/2016_iep_Executive_Summary.pdf.

⁹⁷ UN Doc E/C.12/THA/CO/1-2, op. cit., paras. 23-24.

⁹⁸ 'Petition to remove Thailand from the list of eligible beneficiaries developing countries pursuant to 19 USC § 2462(d) of the Generalized System of Preferences (GSP)', American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), 13 November 2018, p.3.

⁹⁹ Ibid.

¹⁰⁰ Labour Relations Act, op. cit., section 88.

¹⁰¹ Ibid., section 101.

¹⁰² 'Time for a Sea of Change: Why union rights for migrant workers are needed to prevent forced labour in the Thai seafood industry', International Labour Rights Forum, March 2020, p. 6. https://laborrights.org/sites/default/files/publications/ILRF_TimeforaSeaChange.pdf

union.¹⁰³ The exclusion of certain categories of workers under the LRA and SELRA from fully guaranteed legal rights to the freedom of association undermines their ability to mobilise and advocate for decent working conditions, wages and other benefits.

Further, the UN Committee on Economic, Social and Cultural Rights is concerned that under section 33 of the SELRA, all public sector employees do not enjoy the right to strike.¹⁰⁴ Section 77 of SELRA also imposes severe penalties of up to two years imprisonment and a fine of up to 40,000 Baht (approx. US\$1,300) for violating the ban on striking or for instigating a strike. Striking can be a vital tactic to help employees take on power imbalances with their employers and win leverage in negotiations. The general ban on the right to strike of all state enterprise employees and severe criminal penalties for violating the ban are inconsistent with the principles of the freedom of association as reiterated by the ILO Committee on Freedom of Association.¹⁰⁵

(2) Criminal prosecution and retaliation by employers against workers' union leaders and members.

There have been numerous attempts to divide workers and dissolve trade unions, to create division among workers and their representative organisations and to undermine the mobilisation and unionisation of workers in Thailand. Labour rights organisations have reported that the authorities are not taking steps to allow people to access their labour rights under international law, including the rights to the freedom of association, labour organising and collective bargaining.¹⁰⁶ There are well-documented acts of retaliation when workers try to exercise their right to the freedom of association, including when they hold meetings or take informal or spontaneous collective action, such as protesting against poor working conditions.¹⁰⁷ Thai courts have ruled that critical protection measures, including the prohibition of employers from dismissing or taking action against workers who join unions, organise a rally, file a complaint or lawsuit, submit a demand, or provide evidence to the government, apply only when a labour union is registered with the MOL.¹⁰⁸

When workers begin the process of registration, the MOL often contacts an employer to confirm that the workers are employees of the company. When the employer learns the names of the workers who are involved, employers can dismiss these workers legally since their union had not yet been registered, and there are cases of this happening.¹⁰⁹

¹⁰³ State Enterprise Labour Relations Act, op. cit., sections 42 and 43.

¹⁰⁴ UN Doc E/C.12/THA/CO/1-2, op. cit., paras. 23-24.

¹⁰⁵ 'Report in which the Committee requests to be kept informed of development', Committee on Freedom of Association, ILO, Report No. 374, Case No. 3022 (Thailand), June 2014, paras. 614 and 616.

¹⁰⁶ AFL-CIO filed multiple petitions with the US Trade Representatives (USTR) since 2013 which argued that Thailand does not protect the rights of workers up to international standards. See AFL-CIO, op. cit., p.1.

¹⁰⁷ Ibid., p.4.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

One of the most evident examples of retaliation against union leaders and labour activists was the dismissal of six committee members of the State Railway Workers' Union of Thailand (SRUT) Hat Yai branch and seven SRUT leaders for their part in an occupational health and safety initiative launched after the Hua Hin train derailment in 2009, and the imposition of penalties against them for conducting an industrial action.¹¹⁰ The Central Labour Court granted the State Railway of Thailand (SRT) permission to dismiss the 13 SRUT members and officials and ordered the seven SRUT leaders to pay 15 million Baht (approx. US\$500,000) plus 7.5 per cent annual interest accrued from the date of filing to compensate the SRT for damages during the industrial action.¹¹¹ In November 2018, SRT began enforcing its claims for a total of 24 million Baht (approx. US\$730,000) in damages against seven SRUT leaders.¹¹² In February 2019, the National Anti-Corruption Commission, an independent body established to investigate high-level government corruption, began to investigate SRUT leaders over their health and safety initiative. The Central Criminal Court for Corruption and Misconduct Cases are prosecuting the seven SRUT leaders for breach of official duties. If found guilty, they face a maximum of five years imprisonment.¹¹³

In another example, in 2019, Mitsubishi Electric's Thai subsidiary, Mitsubishi Electric Consumer Product Thailand, employed a series of anti-union measures to undermine their workers' rights to the freedom of association and collective bargaining.¹¹⁴ The company ordered a lock-out against 1,800 workers who are members of the Confederation of Thai Electrical Appliances, Electronic Automobile and Metalworkers.¹¹⁵ The company subjected workers who tried to form a union to a four-day military re-education camp, forced workers to sign a written document denouncing their union and dismissed union leaders for their legitimate trade union activities.¹¹⁶

Criminal defamation charges and prosecutions have also been targeted at trade union activists, workers and human rights defenders for making public claims of labour rights. Criminal defamation, under section 326 of the Criminal Code, carries a maximum prison sentence of one year, a fine of up to 20,000 Baht (approx. US\$640), or both. Section 328 criminalises defamation "by means of publication" with up to two years imprisonment and a

¹¹⁰ Committee on Freedom of Association, ILO, op. cit., para. 589.

¹¹¹ Ibid., para. 591.

¹¹² '2019 ITUC Global Rights Index: The world's worst countries for workers', International Trade Union Confederation, 2019, p.15, <https://www.ituc-csi.org/IMG/pdf/2019-06-ituc-global-rights-index-2019-report-en-2.pdf>.

¹¹³ 'Joint Letter to the Prime Minister of Thailand on Suspension of US Generalised System of Preferences', International Trade Union Confederation, European Trade Union Confederation, International Transport Workers' Federation and IndustriALL Global Union, 27 November 2019, http://www.industrialunion.org/sites/default/files/uploads/documents/2019/THAILAND/joint_letter_ituc-itf-industrall-etuc_thailand_gsp_nov_2019.pdf.

¹¹⁴ 'IndustriALL filed complaint against Tokyo 2020 Olympic partner, Mitsubishi Electric', IndustriALL Global Union, 5 June 2019, <http://www.industrialunion.org/industriall-files-complaint-against-tokyo-2020-olympic-partner-mitsubishi-electric>.

¹¹⁵ A lock-out is a legal term for the act of employers prohibiting employees to work temporarily due to a labour dispute.

¹¹⁶ AFL-CIO, op. cit., p.12.

fine of up to 200,000 Baht (approx. US\$6,400). The LRA and SELRA both contain broad exceptions that allow employers to bring criminal proceedings against workers and trade union leaders over what should be considered protected activities.¹¹⁷ The law states that trade union members can be charged with a civil or criminal offence “for explaining and publicising the facts concerning a labour dispute... if the activities constitute criminal offenses in the nature of offenses against the employer’s reputation.”¹¹⁸

For instance, in October 2016, Thammakaset Company Limited, a Thai poultry farm, filed a criminal defamation complaint against 14 workers from Myanmar who were employed by the company and who had raised concerns with the National Human Rights Commission of Thailand over labour rights abuses and poor working conditions. In July 2018, the court dismissed the charge against the workers, citing that they had reported the abuses in good faith to defend their legitimate rights.¹¹⁹ As of June 2020, Thammakaset filed a total of 39 civil and criminal complaints against 23 defendants including migrant workers, labour rights advocates and journalists. Fourteen lawsuits involved criminal defamation charges.¹²⁰

During the second UPR cycle in 2016, the government of Thailand accepted a recommendation to review sections 326 and 328 of the Criminal Code and to align them with international human rights obligations.¹²¹ Thailand also adopted a recommendation to implement the UN Guiding Principles on Business and Human Rights through the development and enforcement of the National Action Plan on Business and Human Rights.¹²² However, Thai authorities have not taken effective steps to implement the amendment of legal provisions under the Criminal Code to prevent judicial harassment designed to silence activists and workers. The repression of the right to the freedom of expression by the government and businesses undermines the enabling environment for civil society and prevents groups from freely and publicly voicing their concerns.

¹¹⁷ AFL-CIO, op. cit., p.10.

¹¹⁸ Labour Relations Act, op. cit., section 99; State Enterprise Labour Relations Act, op. cit., section 58.

¹¹⁹ ‘Thailand: Factsheet: Thammakaset vs. human rights defenders and workers in Thailand’, The Observatory for the Protection of Human Rights Defenders, May 2019, p. 6, <https://www.fidh.org/IMG/pdf/obsthailande2019web.pdf>.

¹²⁰ ‘Thailand: Thammakaset Watch’, International Federation of Human Rights, <https://www.fidh.org/en/issues/human-rights-defenders/thailand-thammakaset-watch#ancre2>. This page documents ongoing judicial harassment by Thammakaset Company against human rights defenders, workers and journalists.

¹²¹ UN Doc A/HRC/33/16, op. cit., para.159.55.

¹²² Ibid., para.158.49.

E. Freedom of association in the context of the COVID-19 pandemic

In a national effort to control the COVID-19 outbreak, on 25 March 2020 Thai authorities imposed a nationwide state of emergency, effective from 26 March to 30 April 2020, with regulations that consequently restricted freedom of assembly, freedom of movement, and freedom of expression.¹²³

Regulation No. 1 issued under Article 9 of the Emergency Decree banned gatherings and prohibited the “press release, distribution or dissemination of letters, publications or any means of communication containing texts which may instigate fear amongst the people or is intended to distort information” on the outbreak.¹²⁴ Regulations No. 2 and No. 3 imposed a curfew from 10pm to 4am, effective from 3 April 2020 throughout the country with exceptions for certain professionals.¹²⁵ An individual can face a prison sentence of up to two years and a fine up to 40,000 Baht (approx. US\$1,270) if found in violation of the curfew.¹²⁶ Workers providing public and healthcare services and “security guards, nightshift and factory workers, fishery, rubber farmers” are exempted from the nationwide curfew.¹²⁷

The state of emergency has been extended six times, until 30 October 2020.¹²⁸ The government lifted the night time curfew on 14 June 2020.¹²⁹ On 31 July, the 13th Regulation under section 9 of the Emergency Decree 2005 was issued, which allowed freedom of assembly, previously restricted under the earlier regulation.

In interviews undertaken for this report, representatives of civil society groups stated that their activities and operations had been negatively affected to different degrees by the pandemic. Members or beneficiaries of their organisations have been disproportionately affected by the special security regulations invoked to fight the virus. In addition, excluded groups, such as people living with disabilities, people living in poverty and sex workers, were not able to access remedies provided by the state, including material assistance and emergency cash relief. In some cases, these excluded groups were able to receive humanitarian aid, albeit significantly delayed.¹³⁰

¹²³ Regulation issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situation, 25 March 2020, op. cit.

¹²⁴ Regulation issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situation, 25 March 2020, op. cit.

¹²⁵ Regulation issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situation 2 April 2020, op. cit.

¹²⁶ Regulation issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005) No. 3, 10 April 2020, https://ddc.moph.go.th/viralpneumonia/file/laws/laws_12.pdf.

¹²⁷ Ibid.

¹²⁸ ‘Thailand’s emergency extended as it looks to ease tourist ban’, The Straits Times, 29 September 2020. <https://www.straitstimes.com/asia/se-asia/thailands-emergency-extended-as-it-looks-to-ease-tourist-ban>

¹²⁹ Regulation Issued under Section 9 of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (No. 10), 12 June 2020, http://www.ratchakitcha.soc.go.th/DATA/PDF/2563/E/138/T_0050.PDF

¹³⁰ Interviews with representatives of three civil society groups, 29 May 2020 and 2 June 2020.

Due to the ban on public gatherings, civil society groups registered as formal associations have not been able to organise a general assembly or an annual meeting, as required by national laws, to discuss the organisation's activities, financial reports and strategy.¹³¹ A representative from a CSO working on labour rights expressed concerns that a legal provision that effectively bars trade unions from organising a general assembly will diminish workers' rights to the freedom of association and collective bargaining.¹³²

Civil society groups that have resources and access to technology, including internet access, were able to conduct their meetings online and comply with working from home.¹³³ However, civil society groups that are working with excluded groups such as people living in poverty, Indigenous communities, small-scale farmers and migrant workers explained that they were unable to conduct online meetings or implement a work-from-home policy because the majority of their members do not have the knowledge, skills and access to technology.¹³⁴ Civil society groups working with excluded communities tend to rely on face-to-face meetings and gatherings to carry out their activities, and the government's ban on cross-provincial travel and a mandatory state quarantine if they travel between provinces prevented them from effectively engaging in their operations.¹³⁵

The authorities' strict night-time curfew and enforcement of the Emergency Decree have disproportionately affected the members of civil society groups working with people living with poverty, factory workers, small-scale farmers and migrant workers. For example, people living in poverty usually work daily-wage jobs or work in the informal sector, including as domestic workers, street vendors, security guards and construction workers, and have lost their incomes or have had difficulties commuting to work.¹³⁶ Some of these workers have been dismissed from work because of business closures or have been unable to carry out night shift duties, as the law requires a written document endorsed by a provincial authority to be presented to the authorities when requested.¹³⁷

A civil society representative working with factory workers and informal workers revealed that the organisation had received several reports of arrests and hefty fines against factory workers who were commuting home from their night shifts, including truck drivers and construction workers.¹³⁸ The official statistics from the Court of Justice demonstrate similar worrying trends: between 1 and 15 May 2020, 8,990 cases had been filed with the court for

¹³¹ Interviews with representatives of three civil society groups, 27 May 2020 and 12 June 2020.

¹³² Interview with a representative of a civil society group, 12 June 2020.

¹³³ Interviews with representatives of three civil society groups, 19 and 29 May 2020 and 2 June 2020.

¹³⁴ Interviews with representatives of four civil society groups, 20, 27 and 29 May 2020 and 11 June 2020.

¹³⁵ Interviews with representatives of four civil society groups, 20, 27 and 29 May 2020 and 11 June 2020.

¹³⁶ Interviews with representatives of two civil society groups, 20 and 29 May 2020.

¹³⁷ Interviews with representatives of three civil society groups, 20 and 29 May 2020 and 12 June 2020.

¹³⁸ Interview with a representative of a civil society group, 12 June 2020; 'Strange cases of emergency violations grow', Bangkok Post, 23 April 2020, <https://www.bangkokpost.com/thailand/general/1906120/strange-cases-of-emergency-violations-grow>.

violation of the regulations under the state of emergency. Under these cases, 12,116 people were convicted of violating the Emergency Decree.¹³⁹

A report by Thai Lawyers for Human Rights (TLHR), a Thai legal aid organisation, highlighted case studies and raised concerns over the prosecution of individuals who distributed food and relief packages to excluded groups during the pandemic.¹⁴⁰ The report revealed that police officers “issued regulations on food distribution, deeming all distribution without official cooperation or without proper preventative measures against the pandemic a violation of the ban on gatherings under the Emergency Decree.”¹⁴¹ As a consequence, people who distributed food and relief packages in public areas have been subjected to or threatened with prosecution for carrying out their humanitarian activities.¹⁴²

Recently, TLHR documented a case of six activists who took part in a peaceful demonstration in front of the Cambodian Embassy on 15 June 2020 demanding an investigation into the abduction of Mr Wanchalearm Satsaksit, a Thai political activist, from his residence in Cambodia on 4 June 2020. The six received a police summons stating that they violated the ban on public gatherings under the Emergency Decree.¹⁴³

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has warned that states have adopted new measures or increased reliance on provisions of laws already in place to penalise the spreading of ‘false news’ in relation to COVID-19.¹⁴⁴ Thai authorities have restricted the freedom of expression, particularly with regard to the expression of online opinions on the government’s response to the pandemic, including by increased online surveillance of critics. Authorities have charged critics under section 14 (2) of the CCA, which prohibits “putting into a computer system false computer data in a manner that is likely to cause panic in the public.” If found guilty, the accused could face prison sentences of up to five years and a fine of up to 100,000 Bhat (approx. US\$3,050). On 23 March 2020, Danai Ussama was arrested for a Facebook post on the lack of COVID-19 airport screening and was subsequently charged under CCA section 14 (2).¹⁴⁵

Thai authorities have been gathering the personal information of patients and their contacts on a massive scale in order to contain the local transmission of the virus. Rights groups have warned the government against the use of unwarranted and unchecked power to track and

¹³⁹ ‘The Secretary to the Court of Justice published statistics on the violations of Emergency Decree between 1 – 15 May 2020’, The Court of Justice, 18 May 2020, <https://www.coj.go.th/th/content/category/detail/id/8/iid/193207>.

¹⁴⁰ ‘TLHR Overall Situation in April 2020’, Thai Lawyers for Human Rights, 12 May 2020, <https://www.tlhr2014.com/?p=17667&lang=en>.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ ‘Thai police summoned six activists calling for justice for Wanchalerm, citing they have violated the Emergency Decree’, Thai Lawyers for Human Rights, 13 June 2020, <https://www.tlhr2014.com/?p=18477>.

¹⁴⁴ ‘States responses to Covid-19 threat should not halt freedoms of assembly and association’, OHCHR, 14 April 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>

¹⁴⁵ ‘Thailand: Covid-19 clampdown on free speech’, Human Rights Watch, 25 March 2020, <https://www.hrw.org/news/2020/03/25/thailand-covid-19-clampdown-free-speech>.

monitor mobile phone activities of individuals.¹⁴⁶ Rights groups reiterate that surveillance and tracking measures must be legitimate, necessary, proportionate and non-discriminatory.¹⁴⁷ However, in June 2020, a leaked document circulated on social media revealed that the government COVID-19 response centre had shared mobile tracking data of individuals with the Ministry of Defence.¹⁴⁸ This disclosure prompted concerns that the government may implement indiscriminate mass surveillance and use this information to target dissidents.¹⁴⁹

These cases highlight the problematic and excessively broad powers delegated to security officers under the Emergency Decree, and its application to criminalise free speech, peaceful assembly and other legitimate activities carried out by civil society groups. UN human rights experts have rightly cautioned states that “any emergency responses to the coronavirus must be proportionate, necessary and non-discriminatory... and should not be used as a basis to target particular groups, minorities, or individuals. It should not function as a cover for repressive action under the guise of protecting health nor should it be used to silence the work of human rights defenders.”¹⁵⁰ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stressed that in many cases, measures on restricting public gatherings and freedom of movement have been designed and adopted without consultations with CSOs. As a result, “these measures are being enforced in a discriminatory manner, with opposition figures and groups, together with vulnerable communities, constituting prime targets.”¹⁵¹

F. Recommendations to the Royal Thai Government

This report calls on the Government of Thailand to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, ICESCR, the UN Declaration on Human Rights Defenders, UN Human Rights Council resolutions 22/6, 27/5 and 27/31 and other human rights standards.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding, and the state’s duty to protect.

¹⁴⁶ ‘Thai authorities’ COVID-19 response must not lead to unwarranted restrictions on human rights’, Amnesty International, 27 March 2020, <https://www.amnesty.org/download/Documents/ASA3920422020ENGLISH.PDF>.

¹⁴⁷ Ibid.

¹⁴⁸ ‘Govt denies phone tracking’, Bangkok Post, 9 June 2020, <https://www.bangkokpost.com/thailand/general/1931432/govt-denies-phone-tracking>.

¹⁴⁹ ‘Thai coronavirus response center is sharing mobile tracking data with the Ministry of Defense’, Thai Enquirer, 9 June 2020, <https://www.thaienquirer.com/14139/thai-coronavirus-response-center-is-sharing-mobile-tracking-data-with-the-ministry-of-defense>.

¹⁵⁰ ‘COVID-19: States should not abuse emergency measures to suppress human rights – UN experts’, OHCHR, 16 March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722>.

¹⁵¹ OHCHR, 14 April 2020, op. cit.

I. Regarding the freedom of association

As recommended by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the right to the freedom of association applies to both formal and informal associations and does not require that a group be registered. Allowing unregistered associations is not only fundamental to a conducive enabling environment for civil society but is also essential to support civic participation.¹⁵² In the light of this, the following specific recommendations are made:

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal, political, economic and social barriers that unwarrantedly limit the right to freedom of association.
- Revise the Ministerial Regulations on Registration of Foundation and Association so as to minimise the costs required to register a foundation and to facilitate a registration procedure that can be easily accessed by people from excluded groups.
- Revise existing national labour laws, including the LRA and SERLA, to guarantee the rights of all workers to effective and autonomous trade unions:
 - Remove legal provisions that discriminate against or exclude migrant workers, informal workers and public sector workers from exercising the right to form and join a trade union.¹⁵³
 - Revise SELRA to recognise the right to strike of state enterprise workers who do not provide essential services, in line with the ICESCR and relevant ILO standards.¹⁵⁴
 - Increase legal protection measures for union members and their leaders, including protection from being dismissed or otherwise discriminated against for any activities related to forming a union or engaging in union-related activities, such as collective bargaining or exercising the right to strike.
- Ratify ILO Conventions 87 (Freedom of Association) and 98 (Right to Organise and Collectively Bargain) and bring national laws into compliance with these standards.
- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Ensure the meaningful participation of stakeholders in decision-making processes of laws, policies and measures to strengthen and support civil society including by providing financial support and ensuring a safe physical space for gatherings.¹⁵⁵

II. Regarding the protection of human rights defenders

- Ensure that civil society activists, human rights defenders and journalists are provided with a safe and secure environment in which they can carry out their work.

¹⁵² UN Doc A/74/349, op. cit., para. 49.

¹⁵³ UN DOC E/C.12/THA/CO/1-2, op. cit., paras. 23-24.

¹⁵⁴ Ibid.

¹⁵⁵ Interview with a student activist, 19 May 2020.

- Protect CSOs and human rights defenders that seek to engage in public interest issues from retaliation and interference from the state and businesses.
- Conduct impartial and thorough investigations into all reports of threats, intimidation, harassment and attacks against human rights defenders, both online and offline, with a view to bringing the perpetrators to account.
- Repeal or amend sections 326 to 328 of the Criminal Code to decriminalise defamation.
- Review the CCA to ensure that ambiguous provisions relating to national security are clearly defined or removed, so they cannot be applied in an arbitrary manner to stifle legitimate and peaceful expression.
- Implement Thailand's commitments under the National Action Plan on Business and Human Rights and the National Human Rights Action Plan to guarantee the safety and security of human rights defenders.
- Refrain from engaging in online information campaigns that vilify human rights defenders and civil society groups that legitimately carry out their activities.

III. Regarding the protection of human rights during the COVID-19 pandemic

- Review the government's use of emergency powers to address the COVID-19 pandemic to ensure they are temporary, exceptional, proportionate, necessary and non-discriminatory and are not used to arbitrarily restrict rights such as the freedom of expression and freedom of information.¹⁵⁶
- Ensure that the powers of authorities to track and monitor mobile phone activity are in conformity with human rights principles. The government must protect the personal information of individuals, and any surveillance or tracking measures must meet the test of being legitimate, necessary, proportionate and non-discriminatory.¹⁵⁷
- Drop all criminal proceedings under the Emergency Decree and other criminal charges against all individuals for peacefully exercising their rights in line with Thailand's international human rights obligations.
- Review legal provisions under the Emergency Decree so as to remove broad and unchecked powers to arrest and detain suspects in contradiction with the right to a fair trial and the right to legal counsel.
- Refrain from restrictions on the freedoms of association and expression online, including internet shutdowns and online censorship. Take measures to ensure that access to the internet extends to the entirety of the population and ensure that internet access is affordable, especially for excluded groups.

¹⁵⁶ Amnesty International, 27 March 2020, op cit.

¹⁵⁷ Ibid.

Annex A

Questions asked during the interviews with representatives of civil society groups.

Perception questions on the right to freedom of association:

1. Is the entity responsible for registering CSOs sufficiently funded and staffed?
2. Is registration easily accessible? E.g., are there sufficient locations/centres around the state for registering CSOs, or is the process all done electronically?
3. What non-legal and non-governmental barriers, such as slow or ineffective bureaucracies, inability to access funds, or difficulty buying/leasing property, affect the formation of CSOs?
4. To what extent is there a perception of excessive discretion, favouritism (political, ethnic, religious, etc.) and/or corruption in the registration process?
5. What level of oversight does the government have over CSOs? Extensive, moderate, or light?
6. In practice, do the legal and administrative requirements referred to above act as impediments to the productive operation of CSOs? Are they helpful to the daily operation of CSOs?
7. Are there non-legal grounds that, in practice, the government uses or cites to terminate or dissolve a CSO? In practice, how have such terminations been conducted: according to the law or otherwise?
8. Is there a history of state harassment of CSOs for allegedly not adhering to administrative and/or legal requirements? Is there a history of state harassment of CSOs for other reasons or in general?
9. Have taxes been used by the state as a form of repression of CSOs practices? If yes, how so?
10. Is CSOs financial sustainability affected by taxes, duties and/or fees? Do taxes, duties and/or fees facilitate or impede CSOs in achieving sustainability in their finances

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Photo: Thai labour groups rally outside the United Nations in Bangkok in March 2020 (Photo Credit: International Labor Rights Forum (GLJ-ILRF))



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