

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*

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1 August 2013

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Dear Ms. Yingluck and Mr. Abhisit,  
Re: Draft Amnesty Legislation

I am writing on behalf of Lawyers' Rights Watch Canada (LRWC), a committee of Canadian lawyers that provides support for human rights defenders in danger and promotes enforcement of international human rights standards and the rule of law.

LRWC has become aware of plans for several versions of amnesty legislation. We wish to express our concern that any amnesty law passed by Parliament must adhere to international human rights law.

LRWC has previously drawn to your attention the pattern of impunity in Thailand by which serious crimes against community activists and other human rights defenders are not properly investigated.<sup>1</sup> More than 20 human rights defenders have been murdered or disappeared with impunity for the perpetrators over the past two decades.

There has been no progress towards accountability for serious human rights violations committed during the political violence from March to May 2010 when more than 90 people were killed and more than 2,000 injured including unarmed demonstrators, volunteer medics, first responders, journalists and bystanders.<sup>2</sup> The 17 September 2012 report of the Truth for Reconciliation Commission of Thailand (TRCT) indicated that killings and injuries resulted from the use of unnecessary or excessive lethal force by Thai security forces and attacks by armed persons (known as "men in black") some of whom were allegedly operating in tandem with the United Front for Democracy against Dictatorship (UDD, also known as "Red Shirts.")<sup>3</sup> However, the TRCT report concluded that the majority of deaths and injuries

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1 See LRWC's letter of 24 August 2011 on the situation of human rights defenders in Thailand, available at

<http://www.lrwc.org/murder-of-mr-thongnak-sawekchinda-the-situation-of-human-rights-defenders-in-thailand/>

2 Human Rights Watch, World Report 2013: Thailand, available at <http://www.hrw.org/world-report/2013/country-chapters/thailand>; Amnesty International Report 2013: Thailand, available at

<http://www.amnesty.org/en/region/thailand/report-2013>

3 Press Release for the Final Report of the Truth for Reconciliation Commission of Thailand, Monday, 17

were caused by Thai security forces. The TRCT urged the government to “address legal violations by all parties through the justice system, which must be fair and impartial.” The TRCT underscored the duty to ensure that “those who violated the law must be held legally accountable.”

We understand there are several current proposals for amnesty legislation, one of which is scheduled for debate in Parliament on 7 August 2013. We understand some of the amnesty proposals would provide blanket amnesties not only for those organizing or attending rallies in defiance of emergency decrees in effect at relevant times, but also for those ordering use of force against protestors. The latter provisions would contravene international human rights law binding on Thailand by providing amnesty for persons responsible for murders, extrajudicial killings or other grave human rights violations.

We draw your attention to the principles of international law that must be respected and upheld in any amnesty law. At international law, amnesties and pardons may be appropriate in some cases, including for individuals organizing or attending demonstrations in violation of emergency decrees and for those charged with *lèse majesté* offences or under the *Computer Crimes Act*. However, a law that would shield from prosecution people suspected of murder or extrajudicial killing would contravene international law generally, and specifically the *International Covenant on Civil and Political Rights* (ICCPR), to which Thailand is a State Party. The Human Rights Committee has concluded that “...amnesties for serious violations of human rights are incompatible with the [ICCPR]....”<sup>4</sup>

In addition, the UN Human Rights Committee has confirmed that a State’s failure to investigate and remedy violations of protected rights may in itself constitute a violation of the ICCPR.

There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.<sup>5</sup>

Thailand’s international human rights obligations require the government to ensure the thorough and impartial investigation of serious human rights violations and the prosecution and trial of suspects.

The ICCPR provides for the right to life (Article 6). No one may be arbitrarily deprived of his or her life. There can be no derogation of this right, whatsoever, not even in times of State emergency (Article 4). The UN Human Rights Committee has stated that:

The protection against arbitrary deprivation of life which is explicitly required by ... article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. *The deprivation of life by the authorities of the State is a matter of the utmost gravity*. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities (emphasis added).

The ICCPR requires States to ensure that victims of human rights violations have the right to an effective

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September, 2012, available at [http://prachatai.com/english/sites/default/files/\\_ENGLISH\\_v2%20Sep%2017.pdf](http://prachatai.com/english/sites/default/files/_ENGLISH_v2%20Sep%2017.pdf).

Full report in Thai available at

[http://www.prachatai.com/sites/default/files/Final%20Report%20TRCT\\_17%209%2012.pdf](http://www.prachatai.com/sites/default/files/Final%20Report%20TRCT_17%209%2012.pdf)

4 Concluding Observations on Spain’s fifth periodic report as a State party to the International Convention on Civil and Political Rights, CCPR/C/ESP/CO/5, 05 January 2009, at para. 9.

5 Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8.

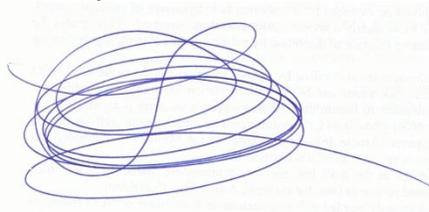
remedy (Article 2.3). The UN Human Rights Committee<sup>6</sup> has stated that disciplinary and administrative proceedings do not constitute adequate and effective remedies within the meaning of ICCPR Article 2(3).

In 2006, the United Nations General Assembly provided further clarification by adopting *Basic Principles and Guidelines on the Right to a Remedy and Reparation*<sup>7</sup> which particularizes the duty of States to investigate gross violations of human rights. Where there is sufficient evidence, the State has the duty to prosecute and, where the suspect is found guilty by an impartial court, the duty to punish the perpetrator(s) and to provide reparations to victims in accordance with Part IX of the Principles.

Amnesty legislation that would shield those responsible for serious human rights violations would violate international law. The use of lethal force by authorities against unarmed civilians as well as the failure to properly investigate and prosecute killings during the 2010 political violence are grave and continuing violations of human rights. It would be a very serious violation of internationally protected rights to use legislation to shield authorities from prosecution for grave human rights violations such as extrajudicial killing, disappearances or other serious offences against demonstrators and other community activists.

We urge you to withdraw this draft legislation and to ensure that any amnesty legislation presented to Parliament for approval meets Thailand's international human rights obligations.

Sincerely,



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6 General Comment No. 06: The right to life (art. 6) 04/30/1982. CCPR General Comment No. 6. (General Comments), available at:

<http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/84ab9690ccd81fc7c12563ed0046fae3?Opendocument>

7 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, available at

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

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