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Thailand: New ICJ Report Raises Concerns with Internal Security Act

The International Commission of Jurists (ICJ) released a report today assessing the Internal Security Act (ISA) in relation to Thailand's international human rights obligations and rule of law principles. While welcoming significant improvements to previous draft versions of the bill, the report warns that the ISA risks undermining the rule of law by conferring broad and vaguely defined preventative powers to the military-dominated Internal Security Operations Command (ISOC).

"Powers provided under the ISA are more limited in scope and less restrictive of rights than those under the Emergency Decree or Martial Law, but there remain serious issues of human rights and democratic governance," said Roger Normand, ICJ's Asia-Pacific Director.

Passed under the coup government and promulgated in early 2008, the ISA's drafting, revision and eventual entry into force reflected a political debate, still continuing in Thailand, about the appropriate role and balance of civilian and military authorities in government. The Act makes ISOC the primary agency responsible for the maintenance of internal security, and gives ISOC intelligence gathering and law enforcement powers. The Act also allows Cabinet to grant ISOC exceptional powers to replace civilian authorities and to suppress any activity considered to pose a threat to internal security.

The report '*Thailand's Internal Security Act: Risking the Rule of Law?*' highlights three main concerns:

- That many definitions and provisions are vague and overbroad, thus potentially criminalising a wide range of behaviours that pose no security threat;
- That fundamental rights – particularly those relating to liberty and security of the person, fair trial and due process, freedom of movement, association and expression – are at risk of being violated; and
- That sweeping powers granted to security forces risk undermining the principles of civilian authority and democratic governance.

"Given Thailand's history of military intervention in politics and weak civilian governments, these concerns are not abstract or illusory," said Mr. Normand. "Under internationally recognised principles and best practice around the world, military or military-dominated institutions should not be given such exceptional powers on a permanent or standing basis. It is dangerous to provide a legislative means for the military to displace civilian authority outside of the rare case of a genuine and lawfully declared state of emergency."

Proponents of the ISA argue that it provides a flexible mechanism to prevent and respond to security challenges that fall below the threshold for declaring a state of emergency. However, this very flexibility increases the risk that governments will invoke the exceptional powers of the ISA to clamp down on political opposition and dissent rather than resolve differences through democratic channels and reliance on the normal criminal justice system. This is especially the case in a situation of heightened political polarisation.

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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“The ISA places emergency-style powers that restrict Constitutional and human rights in the hands of the Executive without requiring parliamentary approval or public debate,” said Roger Normand. “A government may be tempted to take advantage of this lower political threshold to invoke the ISA against elements of the opposition that do not pose a serious security threat to the country.”

In the report, the ICJ maintains that strengthening the rule of law must be central to any governmental strategy to deal with unrest and social divisions in Thailand.

In Thailand’s restive Deep South, where the Emergency Decree and/or Martial Law have been applied since 2004, Cabinet has recently declared the emergency-style powers under Part 2 of the ISA in force in four districts of Songkhla province. “Similar examples from around the world show that far-reaching security legislation has the tendency to normalise and entrench emergency powers, undermine human rights protections, and increase the abuse of power outside the rule of law,” added Mr. Normand.

The ICJ recognises the Royal Thai Government’s obligation and responsibility to provide security throughout the country and therefore does not recommend repeal of the ISA. Instead the report proposes specific amendments and safeguards in accordance with Thailand’s international obligations. Key recommendations include:

- That the Act be revised to ensure that the limits of ISOC’s jurisdiction and powers are clearly defined, and that international standards for the protection of human rights are incorporated into the legislation;
- That the independence and efficacy of administrative and judicial remedies for human rights violations be strengthened and made explicit in the ISA and related legislation, and that the legality of all actions taken under the Act be subject to review by a judge;
- That the Act be revised to guarantee explicitly the full-range of Constitutional and human rights to individuals subject to administrative detention in training camps under section 21, including due process rights, freedom of opinion, expression, religion and movement and freedom from torture or other ill-treatment;
- That the range of law enforcement powers delegated to ISOC should be curtailed and clear rules of engagement that conform to international standards on the use of force should be adopted to govern any law enforcement or crowd control activities by ISOC;
- That civilian control be strengthened by removing the possibility for the Prime Minister to delegate his authority as Director of ISOC to active-service members of the military, by increasing the role of Parliament in the adoption and review of ISA Part 2 powers, and by implementing some form of independent civilian review of ISA regulations and ISOC activities under the Act.

Background information

The Internal Security Act B.E. 2551 (2008) was passed by the National Legislative Assembly of Thailand on 20 December 2007 and came into force on 28 February 2008. In 2009, the Act was invoked seven times by the Cabinet to address a variety of potential security issues.

A high-level legal panel convened by the ICJ released its findings of a worldwide investigation into similar security legislation, counter-terrorism practices and human rights standards in 2009. A copy of the executive summary and the report can be accessed at www.icj.org.

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