



THAILAND: 9-POINT HUMAN RIGHTS AGENDA FOR ELECTION CANDIDATES

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Cover photo: A voter casts a ballot at a polling station in Samut Sakhon province, Thailand, during the re-run voting after protestors disrupted the general elections in February. (March 2014)
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INTRODUCTION

AN OPPORTUNITY FOR CHANGE

As Thailand approaches general elections scheduled for 24 March 2019, Amnesty International calls on candidates and political parties to commit publicly to human rights. The new government must take decisive steps to strengthen the protection of human rights in the country, and to end impunity for rights violations.

Thailand has undertaken significant commitments under international law to uphold, protect and fulfil a range of human rights, from freedom from torture to freedom of expression.¹ The election of a new government provides an opportunity to see that these commitments are respected and translated into domestic law and policy.

Rapid and comprehensive action is needed. The new administration should move quickly to amend or repeal laws and orders that restrict or threaten the enjoyment of a range of rights. Safeguards should be introduced to prevent human rights violations and mechanisms instituted to provide justice to victims.

The new administration should also pledge to address future challenges—including threats to national security and cyberthreats—with policies that uphold human rights, while avoiding unnecessary recourse to emergency powers.

The upcoming elections are the first to take place in Thailand since the May 2014 military coup. They provide a timely opportunity for candidates and political parties to take stock of existing human rights deficits and make public commitments to reform.

Amnesty International invites all candidates and political parties to pledge to make progress in, at least, the following areas:

- ending torture and enforced disappearance
- ending arbitrary detention
- protecting freedom of expression
- upholding the right to peaceful assembly
- protecting human rights defenders
- protecting refugees and migrants, including migrant workers
- protecting the right to privacy in the context of computer use
- providing redress for rights violations
- abolishing the death penalty

¹ Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention on the Rights of the Child; International Covenant on Civil and Political Rights; United Nations Convention against Torture; International Convention on the Elimination of All Forms of Racial Discrimination; and the International Covenant on Economic, Social and Cultural Rights. The Thai Cabinet has also passed a resolution to ratify Convention for the Protection of All Persons from Enforced Disappearance, which it signed in 2012

1. END TORTURE AND ENFORCED DISAPPEARANCE

Enforced disappearances remain a particularly acute problem in Thailand. Victims include human rights defenders, protesters, suspected insurgents, and individuals blacklisted in Thailand's 2003 "war on drugs." Although the government signed the Convention for the Protection of All Persons from Enforced Disappearance in January 2012, it has yet to ratify the treaty or make enforced disappearance a specific criminal offense under Thai law.

Allegations of widespread torture and other ill-treatment by the Royal Thai Police and Royal Thai Army continue to be reported, particularly in the context of counter-insurgency operations in the southern provinces. Although the government ratified the UN Convention against Torture in 2007, the prohibition on torture has not been incorporated into criminal law.

The authorities have also forcibly returned refugees and asylum-seekers to countries where they were at risk of torture and other grave human rights violations, and where they have subsequently faced such violations. This has often taken place without any assessment of their risk of persecution, including the risk of torture.

To protect these abuses, candidates and political parties should pledge to:

- pass into law and implement the draft Prevention and Suppression of Torture and Enforced Disappearances Act, after revising it to be compatible with Thailand's international human rights obligations;²
- establish, in law, policy and practice, safeguards against torture and other cruel, inhuman or degrading treatment or punishment;
- ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the United Nations Convention against Torture;
- institute legal and administrative measures to prevent *refoulement*.

² This entails including adequate safeguards against torture and enforced disappearance; ensuring evidence that results from torture is inadmissible in court, except to prosecute suspected perpetrators of torture; prohibiting *refoulement* and include a definition of torture that is consistent with the United Nations Convention against Torture, before passing it into law.

2. END ARBITRARY DETENTION

Thai domestic law allows for arbitrary detention without charge or trial in unofficial places of detention, in contravention of international law and standards on the administration of justice and fair trial guarantees. State-sanctioned arbitrary detention often takes place incommunicado and without meaningful safeguards. This practice greatly increases the risk of human rights violations, including torture and enforced disappearance.

Undocumented migrants, including refugees and asylum-seekers, have been arbitrarily detained for lengthy or even indefinite periods in immigration detention.

Candidates and political parties should pledge to:

- amend or repeal laws and orders that allow for detention without charge or trial, including in unofficial places of detention, and ensure that individuals are only detained in official places of detention and given prompt access to lawyers, family members, and doctors, and brought before independent courts without delay;
- ensure that the detention of migrants and refugees is a last resort in exceptional circumstances, with a reasonable time limit that is set out in law.

3. PROTECT FREEDOM OF EXPRESSION

Arbitrary restrictions on freedom of expression—including online expression—have increased during the past decade or more of political instability. Peaceful critics, perceived dissenters, academics, politicians, journalists, lawyers, and students have faced criminal proceedings under excessively restrictive or vaguely-worded legislation that grants the authorities unjustifiable latitude to restrict free expression. The use of criminal defamation laws against the media and human rights defenders, including by private companies, has also eroded and had a chilling effect on freedom of expression.³

Since the 22 May 2014 coup and the government's formal derogation from its obligations to uphold freedom of expression under the International Covenant on Civil and Political Rights (ICCPR) in July 2014, the government has imposed arbitrary and sweeping measures suppressing freedom of expression that go beyond those allowed in such emergencies. Such measures include: the monitoring of private communications; the harassment and arbitrary detention without charge or trial of individuals on the basis of their public expression of opinions; the imposition of criminal charges for sedition and lèse-majesté; the freezing of financial assets, and censorship and restrictions on the media, including prohibitions on criticizing the authorities.

To protect the right to freedom of expression, candidates and political parties should pledge to:

- amend or repeal laws and decrees that impose excessive restrictions on freedom of expression;
- repeal criminal defamation laws;
- drop ongoing criminal proceedings against activists, journalists, political figures, lawyers, students and others who have been targeted for exercising their right to freedom of expression, and ensure that those already detained be released.

³ See Computer Crimes Act; Penal Code, Articles 112 governing lèse-majesté, 116 governing sedition and Articles 326-328 governing criminal defamation; NCPO Announcement 97/2014, Announcement 103/2014, and Head of NCPO Order 41/2016.

4. UPHOLD THE RIGHT TO PEACEFUL ASSEMBLY

The right to peaceful assembly is subject to excessive restrictions under Thai law, including criminal sanctions for failure to notify the authorities of plans to protest.

The authorities have charged human rights defenders and community activists for organizing and participating in peaceful protests. They have also forcibly dispersed peaceful gatherings, at times using unnecessary or excessive force.

In a small positive step, the authorities recently lifted the prohibition of “political” gatherings of five or more persons in force between 20 May 2014 and 10 December 2018, which arbitrarily restricted a range of symbolic protests, journalistic efforts, academic activities, and other private and public meetings. While the authorities have in some cases dropped charges against individuals for holding political gatherings in violation of this prohibition, a number of individuals still face charges of sedition for exercising their right to peaceful assembly.

To protect the right to freedom of peaceful assembly, candidates and political parties should pledge to:

- remove all criminal or administrative sanctions from the Public Assembly Act (2015) for lack of notification of an assembly, as well as all provisions criminalizing actions related to peaceful assembly;
- drop all criminal proceedings against defendants targeted for their exercise of the right to peaceful assembly and expunge the convictions of persons who have been so targeted in the past.

5. PROTECT HUMAN RIGHTS DEFENDERS

Scores of human rights defenders have been killed, harassed, and disappeared in Thailand. They have also been affected by restrictions on peaceful protest and expression, including by numerous criminal complaints against individuals seeking to peacefully protect and uphold rights. Land and environmental activists have been particularly vulnerable to attacks aimed at silencing them or preventing their activism.

Many human rights defenders—from migrant workers seeking legal redress to activists documenting environmental damage—have had long-running criminal complaints filed against them by companies under the criminal defamation law in relation to their activities to promote and protect rights. Regardless of whether these complaints actually result in imprisonment, they often have a crippling effect on human rights defenders' work, by consuming substantial time and resources.

To protect human rights defenders, candidates and political parties should pledge to:

- exercise due diligence to investigate attacks, harassment, and intimidation of human rights defenders;
- drop criminal charges against human rights defenders that relate to their advocacy or reporting on human rights violations;
- work to create a safe environment for all defenders, in consultation with them and their communities, with particular attention to the needs of rural communities that have been particularly vulnerable to acts of intimidation, violence and harassment.

6. PROTECT REFUGEES AND MIGRANTS, INCLUDING MIGRANT WORKERS

Thailand has hosted large refugee populations and documented and undocumented migrant workers for decades. These groups have received inadequate procedural and legal protection, exposing them to a range of human rights violations, including in the context of immigration enforcement.

Undocumented migrants, asylum-seekers and refugees face both the risk of arbitrary detention, as well as *refoulement* to places where they would have a well-founded fear of persecution or real risk of human rights violations or abuses. In numerous cases, the authorities have either not adequately assessed the protection needs of affected refugees and asylum seekers, or have knowingly ignored their needs, as well as the absolute prohibition of non-*refoulement*.

Migrant workers are particularly vulnerable to a range of abuses, including of their labour rights, and are also barred under Thai law from forming and organizing trade unions.

To ensure the protection of refugees and migrants, candidates and political parties should pledge to:

- create a formal legal status for refugees in line with international standards, implementing the cabinet decision to create a mechanism for screening refugees and other undocumented migrants;
- institute a robust legal and administrative framework that protects refugees from *refoulement*, and ensures that asylum claims are processed fairly and efficiently;
- ensure that police powers, refugee screening procedures, and immigration enforcement actions are carried out without discrimination on the grounds of race or national origin, upholding the principle of equality and the right to non-discrimination;
- ratify the 1951 Refugee Convention;
- ratify the International Convention on Protection of the Rights of all Migrant Workers and allow migrant workers to organize and hold positions of responsibility in trade unions.

7. UPHOLD THE RIGHTS TO PRIVACY IN THE CONTEXT OF COMPUTER USE

The laws governing computer use in Thailand grant the state expanded powers of surveillance, including access to metadata for the investigation of any crime. Authorities are introducing a cybersecurity bill that grants wide latitude to police and security officials to seize private data and electronic devices without a court order in cases of “emergency”.

To uphold the right to privacy, candidates and political parties should pledge to:

- amend or repeal digital economy laws to protect against mass and/or arbitrary surveillance.

8. PROVIDE REDRESS FOR RIGHTS VIOLATIONS

The government routinely fails to initiate independent, prompt and effective investigations into a range of human rights violations, including torture, extrajudicial killings, and cases of excessive and unnecessary lethal force. Insufficient constitutional safeguards, and the existence of immunity provisions in emergency laws, further hinder possibilities for accountability of suspected perpetrators and justice for victims.

Individuals seeking redress have faced significant procedural obstacles, including limitations to the right of relatives to seek redress under military and criminal procedures codes, as well as acts of intimidation and harassment and threats of or actual counter-prosecutions. Investigations, when opened, have been subject to significant delays with little progress, including after authorities have apparently not taken action on undertakings to transfer cases to specialist investigative bodies. Individuals seeking redress have also faced delays or obstacles after courts have ruled that they do not have jurisdiction. The use of criminal proceedings against individuals seeking redress for human rights violations, including under criminal defamation charges has had a chilling effect and compromised individuals' access to redress.

Candidates and political parties should pledge to:

- amend or repeal emergency laws and National Council for Peace and Order (NCPO) Orders, and take steps to amend constitutional provisions⁴ that could hinder accountability;
- ensure prompt, independent and effective investigations of all alleged human rights violations and bring individuals suspected of responsibility promptly to justice, including through criminal prosecutions before a civilian court.

⁴ Constitution Arts 44, 47, 48; Head of NCPO Order 3/2015 and Head of NCPO Order 13/2016

9. ABOLISH THE DEATH PENALTY

The death penalty is rarely carried out in Thailand, though it is still on the books and still imposed in sentencing. On 18 June 2018, Thailand carried out its first execution since 2009, which followed a period of no executions since 2003. Courts continue to impose sentences of death with some frequency, and the government has increased the number of crimes for which the penalty is applicable, including for non-Thai nationals found guilty of corruption. As of 2018, some 510 people, including 94 women, are on death row, of whom 193 had exhausted their final appeals.

The death penalty remains mandatory for a number of offences, including drug-related crimes that do not meet the threshold of the most serious crimes to which the death penalty must be restricted. However, in 2016, in a positive step, the government abolished the mandatory death penalty for the offence of selling drugs.

The government has called for the abolition of the death penalty in successive National Human Rights Action Plans, requesting that the topic to be subject to parliamentary debate.

Candidates and political parties should pledge to:

- abolish the death penalty, and, pending abolition, impose an official moratorium on its implementation;
- ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

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WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

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After the Royal Thai Army took power in a May 2014 coup and declared martial law, the military authorities heavily restricted the exercise of basic human rights. The upcoming general elections—the first since the coup—offer an important opportunity for candidates and political parties to take stock of Thailand’s human rights deficits and make public commitments to reform.

In this agenda, Amnesty International outlines nine key areas in which reform is needed. These include the rights to freedom from torture and enforced disappearance, freedom of expression, freedom of assembly and association, and the right to privacy in the design of cybersecurity measures. Stronger protections for refugees and people seeking asylum should also be established, and the death penalty should be abolished once and for all.

Amnesty International calls on candidates and political parties to commit publicly to human rights. The new administration must take rapid, comprehensive steps to strengthen the protection of human rights in the country, and to comply meaningfully with its commitments under international law.