

**Submission to the Special Rapporteur on the
Freedom of Assembly and of Association, Mr. Clément Nyaletsoussi Voule,
for his Report to the 50th Session of the Human Rights Council (June 2022)**



**DESTINATION
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ศูนย์ทนายความเพื่อสิทธิมนุษยชน
THAI LAWYERS FOR HUMAN RIGHTS



ASIACENTRE

**Protection of Human Rights in the Context of
Peaceful Protests During Crisis Situations**

Crises: Social and Political Crises; Health Crises (e.g. Pandemics)
Country Context: Thailand
Submission Date: 28 July 2021

Submitting Organisations: Contact Details and Organisational Descriptions

<p>Destination Justice (DJ) https://destinationjustice.org info@destinationjustice.org 11 rue Aimé Collomb 69003 Lyon, France</p>	<p>Established in 2011, Destination Justice (DJ) is an NGO promoting human rights and rule of law, in particular access to justice and access to information. Among other things, DJ has extensively represented, assisted, and reported on persecuted human rights defenders in Southeast Asia and other regions, including before UN bodies. It has also engaged in several UPR processes, including most recently that of Thailand's, for which DJ and several of the present submitting organisations filed a submission on human rights defenders and fundamental freedoms.</p>
<p>Human Rights Lawyers Association (HRLA) https://naksit.net hrla2008@gmail.com 109 Sutthisan Winitchai Road Samsen Nok, Huai Khwang Bangkok 10310, Thailand</p>	<p>Human Rights Lawyers Association (HRLA) was founded in 2008 to protect and promote the rule of law, social justice and fundamental human rights in Thailand. Examples of rights for which HRLA advocates include, but are not limited to, the right to freedom of expression, the right to access justice, community rights, etc. To drive legal and policy changes, HRLA engages in various activities, such as strategic litigation, capacity building for human rights lawyers, human rights documentation and academic work.</p>
<p>Thai Lawyers for Human Rights (TLHR) https://tlhr2014.com/en tlhr@tlhr2014.com 66/4 Lat Phrao 16, Lat Phrao Road Chom Phon, Chatuchak, Bangkok 10900, Thailand</p>	<p>Thai Lawyers for Human Rights (TLHR) is a coalition of human rights lawyers and defenders, formed after the May 2014 coup d'état in Thailand. Their aim has since been to raise awareness about human rights violations resulting from the imposition of martial law and military rule in the country. The organization runs a 24-hour hotline and uses the information gathered to disseminate public awareness and advice for those summoned or arrested. TLHR provides free litigation and legal assistance for vulnerable people whose rights have been affected by martial law and who do not have legal representatives.</p>
<p>Asia Centre (AC) https://asiacentre.org contact@asiacentre.org 128/183 Phayathai Plaza Building Fl. 17, Phayathai Road Thung Phaya Thai, Ratchathewi Bangkok 10400, Thailand</p>	<p>Asia Centre, founded in 2015, is a not-for-profit social enterprise that seeks to create human rights impact in the region. Asia Centre develops evidence-based knowledge toolkits, organises stakeholder capacity building activities and undertakes media and social media advocacy. It is well known for its seminal analysis, "The Universal Periodic Review of Southeast Asia: Civil Society Perspectives" (2018: Palgrave Macmillan, USA).</p>

Crises	Social and Political Crises Health Crises (e.g. Pandemics)
Country Context	Thailand
Question A. In what ways have you observed or do you have knowledge of such a type of crisis situation impacting on assemblies and other such human rights?	

A.1. During its ongoing socio-political crisis and Covid-19 health crisis, Thai authorities have systematically violated the right to peaceful assembly and related fundamental freedoms

1. Thailand has experienced periodic socio-political crises since it shifted to a constitutional monarchy in 1932, most recently following a 22 May 2014 military coup. This triggered five years of military junta rule which not only shrank civic and political spaces but introduced or enforced laws violating international human rights law. This included prohibiting assemblies of five or more people for political purposes, and prosecuting free speech through *lèse-majesté* laws.
2. The junta's introduction of a new Constitution in 2017, while guaranteeing fundamental freedoms like assembly and association, was marred by the prosecution of 204 individuals who peacefully campaigned on proposed amendments. Furthermore, following ostensibly free elections in 2019 transitioning to a civilian administration, in 2020 the Constitutional Council outlawed the opposition Future Forward Party, which had won 82 seats, due to alleged corruption. During the same period, Thailand's longstanding King died and his son replaced him.
3. Since July 2020, these events have catalysed approximately 2,000 mass civilian protests, including 800 in the first half of 2021. Protesters commonly call for the Prime Minister's resignation, amendment of the new constitution, and reform of the monarchy. In October 2020, the government construed protesters' attempts to deviate the Queen's motorcade as an attack and imposed an eight-day *Severe Emergency Decree* (not notified to the UN) effectively outlawing protests.
4. Unfolding alongside the socio-political crisis is the Covid-19 health crisis. On 25 March 2020, the Prime Minister decreed a nationwide emergency due to the pandemic, notifying the UN of such and of its intention to derogate from some *ICCPR* obligations, notably freedom of movement. The *Emergency Decree* has been repeatedly extended without adequate legislative review or judicial oversight, enabling the executive to issue regulations deemed necessary to protect public health. Of 28 such regulations issued, three prohibit and criminalise peaceful assembly.
5. Although protests are ongoing, the socio-political crisis and Covid-19 health crisis have severely curtailed freedom of assembly and continue to endanger those who exercise it. In particular:
 - a. Under the guise of responding to the two crises, the State has introduced laws and policies curtailing assemblies and associated fundamental freedoms beyond international law's permissible limits, even in times of emergency (see the response to **Question B**).
 - b. Individuals have been prosecuted for exercising freedom of assembly and related freedoms e.g. expression, association, and political participation, among whom several have also experienced fair trial violations (see the response to **Question C**).
 - c. Thailand has made progress in terms of new constitutional protections for assembly and abolition of the use of military courts to prosecute civilian protesters, but significant progress

remains necessary for it to conform with its *ICCPR* obligations vis-à-vis fundamental freedoms (see the response to **Question D**).

A.2. This submission is based on primary observation and analysis by local and regional CSOs and direct informant testimony

6. This submission is based on primary information from local submitting CSOs, based on ongoing monitoring of rights violations during the socio-political and Covid-19 crises and representation of persecuted protesters, together with analysis from the regional submitting CSOs. In addition, this submission draws on a 24 March 2021 UPR submission on human rights defenders and fundamental freedoms in Thailand by Destination Justice, the Cross-Cultural Foundation, Duay Jai Group, the Human Rights Lawyer Association, Justice for Peace Foundation, and Asia Centre, which was based on a desk review and informant interviews from human rights defenders, CSOs and journalists. It is available here: <https://destinationjustice.org/uprthailand2021/>. Finally, this submission draws on a recent *Bangkok Post* op-ed by Asia Centre and Destination Justice on the international legality of protesters’ bail conditions, available here: <https://www.bangkokpost.com/opinion/opinion/2153451/thailand-faces-the-spotlight-on-human-rights>.

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Question B. What types of measures have you observed or do you have knowledge of being taken in response to such situations, that impact on assemblies and other relevant human rights?	

B.1. Notification and other administrative requirements are operating to unduly limit peoples’ right to peacefully assemble

7. Thailand’s 2015 *Public Assembly Act* establishes administrative requirements for protests. However, while such laws are permissible if they recognize the right to assemble and facilitate authorities’ ability to guarantee it, Thailand has used the Act to prosecute at least 358 protesters e.g. for notification failures. This significantly hampers the freedom to assemble, violating international law. In addition, although the Act applies only in non-emergencies, at least 38 cases have been pursued while the Covid-19 *Emergency Decree* or the October 2020 *Severe Emergency Decree* have been in effect. An emergency regulation (no. 13) has responded by reiterating the right to assembly and requiring judicial bases for authorities to end protests. In practice, however, protests continue to be dispersed without judicial orders.
8. Moreover, regulations issued under the *Severe Emergency Decree* imposed a five-person limit on assemblies. This effectively outlawed the 278 reported mass protests during the decree’s eight-day application period. Broad crackdowns ensued, with at least 78 protesters arrested. Some were held *incommunicado* and released on bail only after several weeks. Authorities also used water cannons and unknown chemical agents to disperse some protests, injuring at least six protesters and/or bystanders.
9. Since April 2021, protesters have also been arrested for contempt of court or insulting the court for staging protests opposing other protesters’ prosecution. Often this happened in locations such as outside courthouses and parliament, which, while prohibited locations under the *Public*

Assembly Act, are valid locations under international law. Where such protests have occurred inside courtrooms, protesters face sentences ranging from six months to seven years, far exceeding international law's modest limits for such offences.

B.2. Peaceful assemblies have been unduly limited ostensibly in the name of public health

10. Executive regulations issued under the Covid-19-related *Emergency Decree* (including nos. 1, 13, 15 and 28) cumulatively prohibit assemblies of over five people, in crowded places or maximum/highly-controlled areas, or acts which may cause unrest. Others (including nos. 16, 18, 25, 27 and 28) aim to prevent assemblies that may risk Covid-19 transmission. These restrictions fail to acknowledge that, per *General Comment No. 37*, protests may be inherently disruptive and public health-motivated limitations to them should only be imposed in "extreme cases" where the assembly itself "presents a substantial health risk to the general public or to the participants themselves". It is unclear how this is so in Thailand. There is no data on Covid-19 outbreaks at protests, where social distancing and mask-wearing are frequently observed.
11. Nevertheless, peaceful protesters have been prosecuted ostensibly in the name of public health under these regulations and related laws including the *Road Traffic Act*, *Maintenance of the Cleanliness and Orderliness of the Country Act* and *Communicable Disease Act*, etc. These prosecutions appear to selectively target pro-democracy protesters; pro-government protesters have not been targeted. Service providers present at protests to manage the event and provide medical assistance have also been accidentally prosecuted for assembly as well.

B.3. Covid-19-related curfews and movement restrictions appear motivated to stifle protests

12. The government's introduction under 18 July 2021 emergency regulation no. 28 of a nationwide curfew, along with movement restrictions and checkpoints to limit movement between zones, is ostensibly motivated by the desire to combat the spread of Covid-19. However, it also coincided with the announcement of scheduled mass protests in the evenings regarding the government's handling of the Covid-19 pandemic. Indeed, authorities have since cited the new regulation as a basis for dispersing those protests. Thus, observers have alleged that the imposition of such alleged public health measures may have been motivated by a desire to stifle protest which, if so, violates its international law obligations.

B.4. Authorities enjoy official immunity with regard to implementation of the relevant laws, limiting protesters' access to remedies

13. Sections 16-17 of the Covid-19-related *Emergency Decree* grant systematic immunity to those in power acting in good faith, non-discriminately, and not exceeding principles of proportionality and necessity. In practice, this means that regulations issued under the Emergency Decree are not subject to judicial review. Those affected by the orders cannot access judicial remedies except through civil tort under the *Tort Liability by Officer Act*. Thus, Thai courts have, for example, dismissed attempts by a journalist and a group of protesters to sue police and the Prime Minister over injuries sustained during protests. This violates Thailand's *ICCPR* obligations, articulated in *General Comment No. 29*, to provide an effective remedy even during emergencies.

B.5. Once arrested, many key protesters are being released on bail conditions that effectively prevent them from exercising their right to peacefully assemble

- 14. In the first half of 2021, at least 26 key protesters remained in detention facing charges in connection with exercise of their freedom of assembly and related freedoms, including 16 charged with *lèse-majesté* over allegedly-offending expressions. Despite the non-violent nature of the offence, courts cited “high imprisonment” and “severe circumstances” in repeatedly denying bail. However, from April 2021, an apparent shift in prosecutorial policy led to the steady release of these protesters. While ostensibly an improvement, this shift required the protesters to agree to unduly onerous bail conditions in exchange for their liberty. In particular, protesters were required to refrain from organising activities that might damage the monarchy, cause public unrest, or generally participate in political protests.
- 15. Imposition of bail conditions restricting the exercise of fundamental freedoms violates Thailand’s ICCPR obligations explained in *General Comment No. 37* not to request people from refraining in future assemblies. It also exceeds the permissible limits under international law that states may impose on freedom of assembly — limits that generally remain in place during times of emergency, as per *General Comment No. 29*. Indeed, the underlying charged crimes likely violate international law themselves by criminalising criticism of the government, public officials, and monarchs, as noted in *General Comment No. 34*.

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Question C. In what manners have you observed or do you have knowledge of the right to freedom of peaceful assembly, among other relevant human rights, being violated in such a context, or do you imagine it might be violated?	

C.1. Authorities have dispersed protests without basis or using force, with protesters and bystanders occasionally being injured as a result

- 16. Although Thailand’s *Public Assembly Act* regulates how authorities shall disperse illegal protests, several protests have been dispersed by police with limited explanation. Between October 2020 and July 2021, high-pressure water cannons were used against protesters six times, and an unknown chemical weapon mixed into the water four times. Police usually used high-pressure water cannons without warning protesters in advance, targeting protesters’ faces and bodies. Police deployed tear gas and rubber bullets, especially in early 2021, without following proper instructions. Minors, journalists, volunteer medics, and observers were shot and attacked by riot police in their heads, bodies and chests. Some, including minors, were beaten by batons.

C.2. Peaceful protesters are being arrested simply for protesting and exercising related fundamental freedoms

- 17. On 6 March 2021, 48 members of WeVolunteer, a group that facilitates protests including by providing water and paramedical services, were arrested after a peaceful protest in Bangkok. The group alleges that during the arrest, no warrants were presented or information given about charges; some were forced to lie on the ground while others had guns pointed at them despite

being unarmed; and one had flares put in his mouth. They have since been charged with felonies including *Penal Code* articles 209 (membership of a secret society to commit unlawful conduct) and 210 (conspiracy to commit an offence through criminal association). A similar arrest took place just weeks later on 28 March 2021, with the dispersal and arrest of 99 Thalu Pla Village protesters, including minors and monks, who had assembled near the Houses of Parliament. These prosecutions appear to derive simply from the groups' efforts to enable others to exercise freedoms of assembly and association or exercise such human rights themselves. If so, this is a serious violation of international law.

18. In addition, and as noted above in **Part B.1**, 24 individuals have been arrested for protesting the prosecution of other protesters. One, Bright Chinnawat, has been sentenced to four months' imprisonment. Even if his prosecution were legitimate, such a sentence for contempt of court far exceeds the permissible limits under international law.

C.3. Some people are being effectively denied their right to peacefully protest or exercise related rights whatsoever

19. As noted above in paragraph **Part B.5**, certain key protesters are being released on bail only on the condition that they refrain from peacefully assembling or conducting other activities that might damage the monarchy or cause unrest. This amounts to a denial of their right to peacefully protest and exercise related fundamental freedoms, violating international law. In addition, since July 2020, 404 protesters have together been required to post monetary bail totalling over 34 million Baht (approximately US\$1.05 million).

C.4. Protesters and activists are being prosecuted for exercising freedom of expression

20. At least 111 protesters have been charged with *lèse-majesté* under *Penal Code* Section 112, including eight minors. Key protest leaders each face up to 20 separate *lèse-majesté* trials relating to different charges. These prosecutions have related to speeches, books and online posts critical of the monarchy, calling for its reform, and questioning the handling of sovereign wealth. Under the mandatory minimum sentencing regime in place for this crime, those convicted face sentences of 3-15 years per count charged, with one person recently being sentenced to 43.5 years' imprisonment over a series of Facebook post shares. Indeed, private actors (said to be royalist groups) have also been initiating lodging private *lèse-majesté* complaints to the police against individuals, with 1,275 such complaints reportedly made to date.
21. Access to independent information is being increasingly limited during the socio-political and Covid-19 crises. In August 2020 and again in June and July 2021, the government shut down journalists' websites and other critical online spaces and ordered individuals to delete offending posts pursuant to the *Computer-Related Crime Act*, citing national security. These included, for example, the first iteration of Facebook forum Royalist Marketplace (which has since been reopened). This space fosters critical debate on the monarchy and has 2.2 million members, making it one of the 20 largest Facebook groups in the world. However, Thailand's Criminal Court blocked the government's October 2020 attempt to shut down four independent online news outlets (*Voice TV*, *Prachatai*, *The Reporters*, and *The Standard*). Finally, a draft *Official Information Act* proposes to broaden the authorities' power to limit access to purportedly sensitive information, including the public budget designated for the monarchy and military.

C.5. Protesters have faced judicial and other forms of harassment, including under an array of laws indirectly related to assemblies or public health

- 22. Protesters are being judicially harassed via strategic lawsuits against public participation (SLAPP suits). Aside from the abovementioned prosecutions for protesting (**Part C.2**) and exercising other freedoms including expression (**Part C.4**), protesters face charges around peripheral or minor issues, for instance under acts directly related to public health, e.g. the *Maintenance of the Cleanliness and Orderliness of the Country Act*, *Public Assembly Act*, but also under the *Penal Code* (for obstructing the public way) and the *Controlling Public Advertisement by Sound Amplifier Act*. The private sector has also initiated SLAPP suits against protesters, including for criminal and civil defamation.
- 23. Online harassment of protesters has been widely reported as well. Protesters have had personal details posted online in Facebook groups that encourage members to attack them online. The Royal Thai Army also reportedly operates tens of thousands of social media accounts on Facebook and Twitter to attack HRDs and protesters in online harassment campaigns known as information operations (IOs); they reportedly have over 50,000 such Twitter accounts, of which Twitter suspended 926 in October 2020 after reliably connecting them to the military.
- 24. Furthermore, harassment has also extended offline. Several protesters have been physically accosted by apparent private, royalist vigilante groups and made to apologise and prostrate themselves before portraits of the king in order to avoid the vigilantes filing *lèse-majesté* complaints to the police. Despite certain protesters filing complaints about these incidents to police, the perpetrators have neither been prosecuted nor independent investigations seemingly conducted into these incidents.

C.6. Women, youth and LGBTIQ have suffered particular abuse

- 25. Women, LGBTIQ, and youth HRDs have been at particular risk since mass protests began, facing an additional layer of abuse due to stereotypes. The abuse has extended beyond online “witch-hunting” to verbal and physical attacks, including unwanted touching. Youths’ right to education is also under threat through their participation in protests, with students risking disciplinary action and school pressure for protesting. One transgender protester detained for *lèse-majesté* endured a humiliating public physical and mental examination in a men’s prison.

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Question D. What good or promising practices have you observed or do you imagine might be possible that would help to ensure the right to freedom of peaceful assembly, among other relevant human rights, is better respected, protected and/or fulfilled in such a context?	

D.1. There have been certain positive developments

- 26. Thailand has commendably enshrined freedoms of assembly and association and other related fundamental freedoms in its 2017 Constitution. This not only requires domestic laws to be

compliant with these rights but enables anyone to challenge the validity of laws before the Constitutional Court. However, a 7 July 2021 decision of that court ruled that the definition of assemblies under the Public Assembly Act was constitutionally valid but without providing any further clarification enabling the decision to be interpreted and applied in other contexts.

27. A further positive development has been the abolition of a permanent restriction on assemblies in place under the previous military junta which had ordered violators to be tried in military court, even if they were civilians. However, any progress on freedom of assembly that this could have represented is nullified by the fact that similar clauses under other junta orders and announcements remain in effect. Thus, the military still retains a broad discretion to restrict the assembly of five or more individuals in political gatherings akin to its previous power.

D.2. Nevertheless, there remains significant scope for improvement

28. Despite positive developments, there is significant scope for Thailand to improve its efforts to ensure freedom of assembly and other relevant rights. Among other things, it should:
- a. Ensure respect for freedom of assembly in line with its Constitution and obligations under international human rights law, including under recent *General Comment No. 37*.
 - b. Review current regulations engaged under emergency decrees and ensure future regulations enacted under such decrees do not restrict people's right to freedom of peaceful assembly and association, and ensure that Thai officials can be subject to judicial review.
 - c. Ensure transparent and fair implementation of all laws and decrees in relation to the Covid-19 state of emergency.
 - d. Expediently initiate investigations into crackdowns against protesters, in particular those involving use of force.
 - e. Ensure that the right to freedom of expression is fully respected and its exercise facilitated, including with respect to Thailand's *Constitution* and obligations under international human rights law.
 - f. Take immediate steps to bring the *Penal Code* and *Computer-Related Crime Act* in line with Thailand's obligations under international law, and immediately implement public and transparent proceedings in cases concerning these laws.
 - g. End judicial harassment and criminalisation of protesters, including through SLAPP suits.
 - h. Immediately end the arbitrary detention of all protesters and release all those still detained, in particular under the now repealed Severe Emergency Decree.
 - i. Stop all forms of harassment and intimidation of protesters and effectively implement measures aimed at preventing violence and crimes against them, and ensure that all alleged attacks are promptly, thoroughly and independently investigated, and that perpetrators are held accountable.
 - j. Take measures to safeguard broad participation from various sectors in political and public affairs, consistent with international law including the *Declaration on Human Rights Defenders* supported by Thailand.
 - k. Fulfil its voluntary pledge made during its 1st UPR review to issue a standing invitation to all the special procedures of the Human Rights Council, in particular to the Special Rapporteur on freedom of opinion and expression, and freedom of association and assembly.