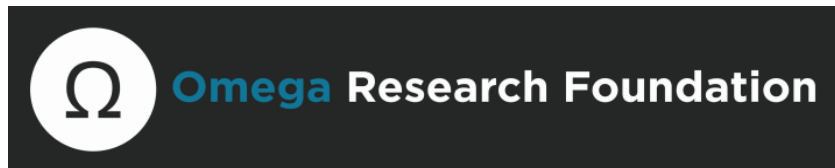


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Thailand  
by the Omega Research Foundation  
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The Omega Research Foundation is an independent UK-based research organisation. We are dedicated to providing rigorous, objective, evidence-based research on the manufacture, trade in, and use of, military, security and police (MSP) technologies.

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1. This submission addresses several key areas of concern surrounding use of force by law enforcement officials in the Kingdom of Thailand. This particular focus arises from the specific knowledge and expertise of the Omega Research Foundation.
- I. Legislation Governing Use of Force in Places of Detention
    2. Recently, the Thai Corrections Act repealed the Penitentiary Act (1936).<sup>i</sup> While the Corrections Act is an improvement on the previous Act, it does still not comply with the BPUFF<sup>ii</sup>, the Nelson Mandela Rules<sup>iii</sup>, or the Bangkok Rules<sup>iv</sup>.
    3. Section 21 of the Corrections Act, concerning the use of restraints, does not stipulate that instruments of restraint which are inherently degrading or painful should be prohibited. In addition, while the Act does outline circumstances in which it allows detainees to be placed in restraints, these are vague. For instance, they include, when “owing to the conditions of prison or other necessary reasons, it is necessary to do so”, and when: “restraint is deemed reasonable by the official in charge of the escort”.<sup>v</sup> Such categories are too broad, do not conform to international standards, and will facilitate the continuing use of instruments of restraints when not strictly necessary. Such use may amount to torture or other ill-treatment.
    4. Section 23 of the Corrections Act permits the use of firearms if a prisoner tries to escape and refuses to stop when ordered, and if three or more prisoners cause a disturbance or attempt to use force in opening or destroying prison gates, fences, walls, or other buildings, or violently cause an injury to another person.<sup>vi</sup> In contrast, the BPUFF states that, when working with people detained of the liberty, “law enforcement officials [...] shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger”.<sup>vii</sup>
    5. The Act contains no stipulation on the use of restraints on a person during childbirth, which is addressed in the Bangkok Rules.<sup>viii</sup>
  - II. Legislation Governing Use of Force by Law Enforcement Officers
    6. Although Thailand has signed the Convention Against Torture, it has not fully implemented the Convention as Thai legislation does not include a specific crime for torture. Although the Draft Prevention and Suppression of Torture and Enforced Disappearance Act<sup>ix</sup> is a significant a significant step forward in implementing the Convention; according to the UN the Act does not fully comply with the requirements of the Convention as: “the approved draft lacks essential international principles, including the absolute prohibition of torture.”<sup>x</sup> Omega advises that Thailand amend its legislation to fully implement the Convention Against Torture, as has been recommended in its previous UPRs.<sup>xi</sup>
    7. The Criminal Procedure Code states: “the arrester is empower [sic] to exercise manners or defences as far as suitable to circumstances of the manner of the arrest”.<sup>xii</sup> There is no requirement in the Code that officers both exercise restraint in the use of force and ensure that any use of force is in proportion to the seriousness of the offence and the legitimate objective to be achieved. These provisions are stipulated in the BPUFF<sup>xiii</sup>, and should be included in the Criminal Procedure Code.
    8. The Constitution of the Kingdom of Thailand guarantees freedom of peaceful assembly.<sup>xiv</sup> Despite this, the 2015 Public Assembly Act restricts peaceful assembly through a broad definition of a protest, burdensome notification requirements, and criminalisation of those organising and participating in protests.<sup>xv</sup> In addition, the Emergency Decree of Public Administration in Emergency Situations, which was

invoked in March 2020 in response to the Covid-19 Pandemic, further restricts the right to protest. The Decree allows the Prime Minister to “prohibit the assembly or gathering of persons at any place or the commission of any act which may cause unrest” and permits authorities to arrest individuals without charge.<sup>xvi</sup> This decree has been extended until at least 31 March 2021.<sup>xvii</sup> Omega recognises the public health challenges of the Covid-19 pandemic however we urge the Thai government to review the emergency legislation and ensure that it is not used to arbitrarily restrict rights. The Public Assembly Act should also be amended to ensure it protects the right to peaceful assembly, as recommended in the 2<sup>nd</sup> UPR Cycle.<sup>xviii</sup>

III. Excessive force used against those participating in public gatherings

9. In 2020 and 2021 police in Thailand have used water cannon containing dye and chemical irritants, chemical irritant grenades, and kinetic impact grenades against peaceful pro-democracy protestors.<sup>xix</sup> This use contravenes UN Guidance on the use of less-lethal weapons by law enforcement, which states that these types of weapons should not be used against peaceful protestors.<sup>xx</sup>
10. The use of chemical irritants by law enforcement is of particular concern during the COVID-19 pandemic. Coughing, sneezing, and increased touching of the face caused by chemical irritants heightens the risk of spreading COVID-19, and use of chemical irritants may also exacerbate the effects of this respiratory disease.<sup>xxi</sup>

IV. Human rights monitoring

11. In 2015, the National Human Rights Institution of Thailand (NHRCT) was downgraded by the Global Alliance of National Human Rights Institutions, for being deemed to be only partially compliant with the ‘Paris Principles’ that establish minimum standards for National Human Rights Institutions. According to Forum-Asia, the NHRCT suffers “from severe legitimacy challenges and a lack of public confidence because of its continued failure to effectively protect rights, its continually poor performance, and its politically compromised independence, all of which fall substantially short of the minimum international standards mandated in the Paris Principles”.<sup>xxii</sup> An independent National Human Rights Institution is essential to monitor and protect human rights.
12. Thailand should ensure that the NHRCT fully complies with the Paris Principles and is an external and fully independent body, able to inspect places of detention as recommended in previous UPRs.<sup>xxiii</sup>

V. International standards

13. Thailand has not ratified the Optional Protocol to the Convention Against Torture, despite being called to do so in the 2<sup>nd</sup> UPR Cycle<sup>xxiv</sup> and, at the time, stating it supported such a measure. We encourage them to do so at the earliest opportunity.
14. In July 2019, the UN General Assembly Resolution ‘Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards’ was adopted<sup>xxv</sup>. Various UN Special Procedures have stated that the duty to prevent torture and other human rights violations requires States to establish effective controls to prohibit the trade of inherently abusive goods and regulate the trade of other law enforcement equipment that can be readily misused.<sup>xxvi</sup> Although Thailand abstained from the 2019 Resolution vote, Omega encourages Thailand to engage with the ongoing process to explore possible options for international

standards, including supporting the work of the forthcoming Group of Governmental Experts.

#### VI. Recommendations

15. Ensure legislation fully complies with international human rights standards.
16. Ensure that the use of force is strictly regulated in accordance with international human rights standards in all situations, including in places of detention and during public gatherings.
17. Establish an independent and fully funded NHRI at the earliest opportunity.
18. Ratify international human rights treaties, including the OPCAT at the earliest opportunity.
19. Support the ongoing UN process to develop international controls on the trade in tools of torture.

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<sup>i</sup> *Corrections Act B.E. 2560 (2017)*[Thailand], 17 February 2017.

<sup>ii</sup> United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN BPUFF), Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>iii</sup> UN Standard Minimum Rules for the Treatment of Prisoners (the ‘Nelson Mandela Rules’), adopted by the UNGA on 17 December 2015, UN Doc. A/Res/70/175.

<sup>iv</sup> UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the ‘Bangkok rules’), adopted by the UNGA, UN Doc A/RES/65/229.

<sup>v</sup> *Corrections Act B.E. 2560 (2017)*[Thailand], 17 February 2017. Section 21.

<sup>vi</sup> *Corrections Act B.E. 2560 (2017)*[Thailand], 17 February 2017. Section 23.

<sup>vii</sup> United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN BPUFF), Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Para 16.

<sup>viii</sup> UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the ‘Bangkok rules’), adopted by the UNGA A/RES/65/229.

<sup>ix</sup> Draft Prevention and Suppression of Torture and Enforced Disappearance Act (unofficial translation). <https://crcfthailand.org/2020/05/04/translation-draft-prevention-and-suppression-of-torture-and-enforced-disappearance-act-b-e-people-version/>.

<sup>x</sup> VOA News, “UN Urges Thailand to Apply International Standards to Torture, Disappearance Law” 17 July 2020, <https://www.voanews.com/east-asia-pacific/un-urges-thailand-apply-international-standards-torture-disappearance-law>.

<sup>xi</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review – Thailand, A/HRC/33/16, recommendations 158.30 (Slovakia), 158.11 (Romania), 158.12 (Spain), 158.33 (Canada).

<sup>xii</sup> *Criminal Procedure Code B.E. 2539 (1999)* [Thailand], Section 83, <http://un-act.org/publication/download/thailands-criminal-procedure-code-1999>

<sup>xiii</sup> BPUFF, Article 5(a).

<sup>xiv</sup> *Constitution of the Kingdom of Thailand B.E. 2540 (2017)* [Thailand], 6 April 2017. Section 44.

<sup>xv</sup> *Public Assembly Act B.E. 2558 (2015)* [Thailand], 9 July 2015.

<sup>xvi</sup> *Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005)* [Thailand], 16 July 2005. Section 9.

<sup>xvii</sup> The Nation, “Emergency law extended but restaurants, pubs allowed to serve alcohol until 11pm”, 22 February 2021, <https://www.nationthailand.com/news/30402922>, accessed 16 March 2021.

<sup>xviii</sup> See A/HRC/33/16 Recommendations 158.141 (Costa Rica); 158.138 (Austria), 159.60 (Botswana), 159,59 (Germany).

<sup>xix</sup> See for example: Human Rights Watch, “Thailand: Water Cannon Used Against Peaceful Activists”, 16 October 2020. <https://www.hrw.org/news/2020/10/17/thailand-water-cannon-used-against-peaceful-activists>, accessed 16 March 2020; Human Rights Watch, “Thailand: Police Violence Against Democracy Demonstrators”, 17 November 2020, <https://www.hrw.org/news/2020/11/19/thailand-police-violence->

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against-democracy-demonstrators accessed 16 March 2021; Amnesty International, “Thailand: Release peaceful critics and de-escalate tensions amid fresh wave of protests”, 6 March 2021. <https://www.amnesty.org/en/latest/news/2021/03/thailand-release-deescalate-protest-grows/> accessed 16 March 2021.

<sup>xx</sup> OHCHR, *UN Human Rights Guidance on Less-lethal weapons in Law Enforcement*, 2020. Section 7.7.2.

<sup>xxi</sup> Omega Research Foundation, *Lowering the Risk: Curtailing the use of chemical irritants during the Covid-19 Pandemic*, 2020, <https://omegaresearchfoundation.org/publications/lowering-risk-curtailing-use-chemical-irritants-during-covid-19-pandemic>.

<sup>xxii</sup> Forum-Asia “Strengthen National Human Right Commission before Accreditation Upgrade, says NGO network”, Prachatai English, 18 December 2020, <https://prachatai.com/english/node/8974> accessed 16 March 2021.

<sup>xxiii</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review – Thailand, A/HRC/33/16, recommendations 158.13 (Czech Republic, Denmark, Morocco), 159.31 (United Kingdom), 158.38 (Egypt), 158.41 (Paraguay), 158.42 (Poland), 158.42 (New Zealand), 158.42 (Portugal), 158.45 (Senegal), 158.46 (Australia), 158.47 (France), 158.48 (Nepal).

<sup>xxiv</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review – Thailand, A/HRC/33/16, recommendations 158.7 (Kazakhstan, Georgia), 158.8 (Mozambique), 158.9 (Honduras), 158.9 (Austria, France, Guatemala, Montenegro, Poland, Portugal, Turkey, Uruguay, Norway), 158.13 (Czech Republic, Denmark, Morocco).

<sup>xxv</sup> A/RES73/304, adopted by the UNGA on 1 July 2019.

<sup>xxvi</sup> See, for example, UN Special Rapporteur on torture, Nils Melzer. 2017. *Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment*. UN doc. A/72/178. UN General Assembly. See also, Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. 2016. *Joint report of UN Special Rapporteurs on freedom of peaceful assembly and association, and extrajudicial, summary or arbitrary executions*. UN doc. A/HRC/31/66. Human Rights Council.