

Suppressing Dissent in the Name of Public Health: Thailand's Abuse of the Covid-19 Emergency Decree





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Executive Summary

In 2020, the democratic movement in Thailand experienced a significant surge as the younger generation participated in ‘leaderless’ demonstrations across the nation, advocating for the restoration of power to the people. However, this period coincided with the emergence of the COVID-19 pandemic, posing a considerable obstacle to public gatherings. In response to this dual challenge, the government invoked the Emergency Decree on Public Administration in Emergency Situations (the ‘Emergency Decree’), to ban and penalize any form of protests.

Nevertheless, 2021 saw an unprecedented numbers of protests in Thailand, resulting in hundreds of prosecutions of protesters. A majority of those arrested have been accused of violating Regulations issued under the Emergency Decree. Many who have been charged were peaceful protesters, or petitioners simply making requests around desired policy changes.

Thailand’s supposed COVID-19-related state of emergency lasted from 26 March 2020 until 30 September 2022, approximately two and a half years. Under the Emergency Decree, Prayuth Chan-o-cha, the former military leader and coup orchestrator, centralized power from government ministries under his coalition parties, relegated power to top brass, and gave a ‘green light’ to police to violently crackdown on demonstrators. Enjoying impunity, he issued regulations to provide legal cover for authorities to exercise power without being accountable for violating the law.

After the end of the COVID-19 pandemic, the democracy movement waned. This was partly because so many protest and youth leaders had been arrested under the Emergency Decree and other regulations. Even after the end of the protests and the pandemic, over 1,400 protest leaders and other demonstrators remain saddled with charges, in some cases as many as 10-20 charges each. Despite the government’s decision to lift the state of emergency, these cases continue. They have burdened hundreds of people who merely exercised their freedoms of expression and assembly. Now, these individuals must attend trials that disrupt their life and cause significant financial and practical burdens, while creating an unnecessary strain on the judicial system.

While some cases have been dismissed by the courts on the grounds of freedom of assembly and others have seen prosecutors decide not to indict charged individuals, the caseload remain high. Defendant lawyers are overwhelmed while hundreds of defendants have been sentenced to jail time and fined for merely assembling peacefully.

Under these circumstances, there are legal solutions that may appropriately resolve these cases and restore the right to free assembly and other civic freedoms to the Thai people. However, the new government has yet to be clear on its stance, and is at risk of forgetting the plight and cases of at least 1,469 defendants. It is imperative that the new government, and future Thai leaders, protect the freedom of assembly and do not abuse emergency legislation to restrict civic freedoms.

What is the Emergency Decree?

The Emergency Decree on Public Administration in Emergency Situations (“The Emergency Decree”) was enacted in 2005 by Prime Minister Thaksin Shinawatra ‘s government to increase the military’s power to fight the insurgency in southern Thailand.

The emergency decree broadly covers situations which affect the public order of the people, endanger the security of the State, or relate to terrorist offenses, a battle, or war.¹

After promulgating the emergency decree, effectively circumventing the parliamentary consideration process, the government has continuously declared a state of emergency in three southern border provinces for 18 years. The law has also been used many times to police anti-government protests in Bangkok, such as in the 2009, 2010, and 2013 protests. When protests ended, the state of emergency would be lifted. The Emergency Decree has subsequently become known as the law regularly used by authorities to prohibit assemblies, as well as to arrest and prosecute protesters.

On 26 March 2020, Prime Minister Gen. Prayut Chan-o-cha declared a nationwide state of emergency, due to the need to control the spread of COVID-19. This is the first time that the Emergency Decree had been used for a public health reason, not for an insurgency or political protest.

The declaration of emergency is meant to last no longer than 3 months; however, it can be extended endlessly, without limitation. When it is announced, the power and duties of all public sectors involved in prevention and resolution of emergency situations are transferred under the Prime Minister’s authority. In an emergency, the Prime Minister has the power to issue further regulations for public sectors or citizens to follow. Section 9 further allows the government:

- To prohibit any person from departing from a dwelling place
- To prohibit an assembly or gathering at any place
- To prohibit the press release, distribution or dissemination of publications or any means of communication which may instigate fear amongst the people or unrest
- To prohibit the use of routes or vehicles
- To prohibit the use of buildings, or entering or staying in any place, and to evacuate people out of a designated area

Section 18 imposes penalties for anyone violating the Emergency Decree, of up to two years’ imprisonment and/or a fine not exceeding 40,000 baht (~\$1150 USD).

¹ EMERGENCY DECREE ON PUBLIC ADMINISTRATION IN EMERGENCY SITUATION, B.E. 2548 (2005)

Section 4. In this Emergency Decree:

“Emergency situation” means a situation, which affects or may affect the public order of the people or endangers the security of the State or may cause the country or any part of the country to fall into a state of difficulty or contains an offence relating to terrorism under the Penal Code, a battle or war, pursuant to which it is necessary to enact emergency measures to preserve the democratic regime of government with the King as Head of State of the Kingdom of Thailand under the Constitution of the Kingdom of Thailand, independence and territorial integrity, the interests of the nation, compliance with the law, the safety of the people, the normal living of the people, the protection of rights, liberties and public order or public interest, or the aversion or remedy of damages arising from urgent and serious public calamity.

Political Background 2020-2022

Commander-in-chief General Prayut Chan-o-cha seized power from the elected government in 2014 and appointed himself Prime Minister on behalf of royalist soldiers loyal to the king. Later, he appointed his associates to write the new constitution, which contained numerous provisions designed to prolong the junta's power. These include having 250 senators elected by the junta, who then have the power to choose the Prime Minister as well as influence selection of the judges of the Constitutional Court, the Election Commission, the National Anti-Corruption Commission, the National Human Rights Commission, and others.

This system kept Thailand's governance in the hands of a small group of people until 2019, when the Future Forward Party emerged and quickly gained popularity due to its progressive ideology, which appealed to a new generation of voters. However, the Constitutional Court dissolved the Future Forward Party on 21 February 2020 on specious grounds, leading to widespread dissatisfaction, particularly at many well-known universities and schools.

The trend of protest had grown continuously in educational institutions, partly because activities at educational institutions were exempted from the Public Assembly Act. Another law, crafted and enacted during the era of military coups, provided a platform for the younger generation to leverage certain loopholes in order to exercise their freedom of expression and undermine the authority of successive governments.

However, with the onset of the COVID-19 pandemic, public assemblies gradually dwindled and ceased within a span of less than a month. Despite this, discontent against the ruling regime persisted, partly accounting for the government's decision to promulgate the Emergency Decree on a day when people chose to stay at home.

Following a nationwide lockdown and two months of restricted entry into Thailand, reported cases of COVID-19 in the nation dropped to zero. In July 2020, protests resumed, spearheaded by the younger generation and supported mainly by the urban middle class. The movement gained momentum by transitioning from protests within educational institutions to street demonstrations, orchestrated by numerous youth groups. Each group independently organized gatherings with three key demands: 1) resignation of General Prayut and his associates, 2) amendment of the Constitution, and 3) reform of the monarchy.

These bold and assertive demands unsettled the established power structure, leading to unprecedented insecurity among those in control. In response, the military government utilized various means, including armed forces and legal justifications, to quash the exercise of freedom of expression. Protesters faced obstruction from the police, educational institution administrators, and legal prohibitions such as the Public Assembly Act, along with charges in the Criminal Code, including insulting the King under Section 112, sedition charges under Section 116, and being a member of a secret society under Section 309. The deployment of the Emergency Decree granted General Prayut the authority to prohibit assemblies, with the police wielding extensive powers to declare any public gathering in violation of the law.

Between 2020 and 2021, over 2,200 anti-government assemblies emerged, as small or medium-sized rallies across the country. Each protest group operated independently, communicating through social media and holding distinct viewpoints. The police responded to these assemblies with force, deploying weapons such as rubber bullets, tear gas, and high-pressure water guns to disperse crowds on at least 60 occasions. This period marked the highest number of political lawsuits in Thai history. Despite the ongoing protests, General Prayut Chan-o-cha and his associates clung to power until the sentiments expressed in the demonstrations translated into electoral results in 2023, forcing General Prayut to resign from politics. However, the legacy of these laws and lawsuits has continued to shape the political landscape.

Prohibitions of Assembly under the Emergency Decree

During the political uprising of the new generation, the Emergency Decree and particularly Section 9 and subsequent regulations allowed the police to ban assemblies, arrest and prosecute protesters, and use weapons to disperse crowds in the name of upholding laws used to control the epidemic.

First wave of Covid: general assembly prohibition under Emergency Decree

The prohibition of assembly was explicitly outlined in Regulation No. 1, enacted on 25 March 2020, under [Section 5 of the Emergency Decree](#), which stated:

“To prohibit the assembly, the activity or gathering at any crowded place, or the commission of any act which may cause unrest.”

Any individual found in violation of this regulation would face penalties under the Emergency Decree, including imprisonment for a term not exceeding two years, a fine of up to 40,000 baht, or both.

Throughout the period governed by Regulation No. 1, political activities were absent, as people were afraid of COVID-19. On 1 May 2020, Regulation No. 5 was issued to expand the restriction to activities “consisting of people at any crowded place or having any chance to easily contact each other.” This regulation not only broadened the prohibition on gatherings but also encompassed all types of activities.

In July 2020, as the COVID-19 situation in Thailand became less concerning, people began returning to normal life and expressing opposition to General Prayut Chan-o-cha’s government. The government shifted its stance, seeking to manage the escalating protests among youth through the Public Assembly Act. Consequently, on 31 July 2020, [Regulation No. 13](#) was issued. It allowed for the organization of assemblies within the bounds of the Public Assembly Act.

Second wave of Covid: prohibitions on gathering with extensive conditions

At the close of 2020, Thailand witnessed a significant surge in new COVID-19 infections, potentially from the entry of migrant workers. Subsequently, on 23 December 2020, General Prayut issued [Regulation No. 15](#), marking the initiation of assembly prohibitions during the second wave. This regulation imposed identical conditions to those outlined in Regulation No. 1, banning assemblies, activities, or the gathering at any crowded place or the commission of any act which may cause unrest.

Then, on 3 January 2021, General Prayuth issued [Regulation No. 16](#), which did not directly prohibit assemblies but instead restricted “activity in the maximum control zone where there are a large number of persons, and they can easily touch each other.” In practical terms, both regulations were implemented concurrently. When protesters were accused of illegal gatherings, charges could be levied under both Regulations No. 15 and No. 16 simultaneously.

Third wave of Covid: limiting gatherings of certain sizes

In April 2021, after the “Thonglor Cluster” emerged, there was another surge in infections, constituting the third wave. Following this, [Regulation No. 20](#) was introduced, which not only broadly banned gatherings but also specifically restricted activities involving more than 50 people unless permission was granted. This marked the first time a specific number of people was mentioned.

Subsequently, several regulations were issued under the Emergency Decree, with adjustments based

on the severity of the outbreak. These regulations also set limits on the number of participants, depending on the type of zones, such as maximum and strict control zones. For instance, [Regulation No. 22](#), dated 29 April 2021, prohibited activities involving more than 20 persons. [Regulation No. 24](#), dated 29 June 2021, prohibited activities involving more than 50 persons. The strictest measure came with [Regulation No. 30](#), dated 1 August 2021, which prohibited activities involving more than 5 persons.

Meanwhile, Regulations No. 15 and No. 16 were still in effect. In practice, all regulations were applied together. Those organizing gatherings during each period might face prosecution under various conditions and regulations of the Emergency Decree.

Fourth wave of Covid: limiting the number of persons and prohibiting assemblies simultaneously

The Omicron variant led to higher COVID-19 infection rates; however, implementing “lockdowns” during the third wave had significant economic and societal consequences, leading to business closures and widespread suffering.

Rather, on 15 October 2021, General Prayut issued Regulation No. 35, followed by [Regulation No. 37](#) on 31 October 2021. Regulation No. 37, Section 2, permitted activities in certain zones with specific limits on the number of people and it also included clauses identical to Regulations No. 1 and No. 15, prohibiting general gatherings. Consequently, organizing activities from November 2021 onward involved navigating overlapping conditions related to zone types, the number of persons, the nature of activities in crowded places, and considerations of incitement and unrest.

In addition to the assembly prohibition regulations, General Prayuth Chan-0-Cha issued [Order of the Prime Minister No.4/2563](#), appointing the Chief of Defence Forces to address the emergency situation, even though the Commander’s responsibilities were unrelated to the epidemic. This raised concerns of opportunism in using the Emergency Decree to directly influence politics. Chief of Defence Forces General Pornpipat Bunsri, at the time, subsequently issued the [first Announcement](#) on 3 April 2020 attempting to prohibit assemblies, activities, and gatherings that could risk spreading disease throughout the Kingdom.

		Date of issue	Conditions of assembly
Covid Wave 1	No.1	25 Mar 2020	* prohibit the assembly, the activity or gathering at any crowded place or the commission of any act which may cause unrest
	No.5	1 May 2020	prohibit the activity consisting of people at any crowded place or having any chance to easily contact each other
	No.13	31 July 2020	Abolish the prohibitions and enforce any regulations under Public Assembly Act
Wave 2	No.15	25 Dec 2020	* prohibit the assembly, the activity or gathering at any crowded place or the commission of any act which may cause unrest
	No.16	3 Jan 2021	prohibit activity in the maximum control zone where there are a large number of persons, and they can easily touch each other
Wave 3	No.20	16 Apr 2021	prohibit the activity of more than 50 persons without permission
	No.22	29 Apr 2021	In maximum and strict control zone, prohibit the activity of more than 20 persons without permission
	No.24	19 Jun 2021	In maximum and strict control zone, prohibit the activity of more than 50 persons without permission
	No.30	1 Aug 2021	In maximum and strict control zone, prohibit the activity of more than 5 persons without permission
	No.32	28 Aug 2021	In maximum and strict control zone, prohibit the activity of more than 25 persons without permission
Wave 4	No.35	15 Oct 2021	In maximum and strict control zone, prohibit the activity of more than 50 persons without permission
	No.37	31 Oct 2021	In maximum and strict control zone, prohibit the activity of more than 50 persons without permission * prohibit the assembly, the activity or gathering at any crowded place or the commission of any act which may cause unrest

Over the two years of the Emergency Decree's use, 14 announcements were issued. Although the penalty for violating these announcements stayed consistent (imprisonment not exceeding 2 years and a fine not exceeding 40,000 baht), the conditions for enforcement kept changing and created confusion for law enforcement officers and the public.

The measures declared in these announcements depended on the outbreak zone, initially categorized as the maximum control zone, control zone, high surveillance zone, and surveillance zone. Later, two more zone types, the maximum and strict control zone, and the pilot tourist attraction zone were added.

The Chief of Defence Forces took serious action during the second wave

Between mid-to-end 2020, as the country remained infection-free, the initial Announcement from the Chief of Defence Forces was consistently employed without revisions. However, by the end of 2020, Thailand faced a second wave of the outbreak. On January 8, 2021, the Chief of Defence Forces issued Announcement No. 2, imposing a nationwide prohibition on gatherings, for 10 days. [Announcement No. 2](#) prohibited assemblies or activities in crowded places with a large number of people and the chance for close contact in the maximum control area. On February 19, 2021, Announcement No. 4 granted authority to the Commissioner of the Royal Thai Police to enforce these measures appropriately.

As the COVID situation eased, [Announcement No. 5](#) on March 5, 2021 prohibited assemblies in certain areas, with the same conditions. For other areas, Announcement No. 2 remained in force, requiring assembly permissions from the provincial governor.

Subsequently, on July 20, 2021, the Chief of Defence Forces issued [Announcement No.8](#), recognizing that the Royal Thai Police have significant enforcement powers but that these must not unreasonably burden the public.

The fourth wave of outbreak: prohibiting gatherings of more than 5 people

The Delta variant in Thailand resulted in fewer illnesses than other strains, but with a higher infection rate. In mid-2021, the Chief of Defence Forces intensified the prohibition on assembly through a series of at least 8 announcements, each enforced for a brief period, with an average duration of approximately 24.14 days. The content of these announcements was largely similar, adjusting prohibitions based on the designated area. For examples, [Announcement No. 6 on July 16, 2021](#) outlined regulations that prohibited gatherings throughout the country and restricted activities prone to disease transmission, limiting gatherings to no more than five persons in Bangkok and surrounding areas.


19 days later, [Announcement No. 9](#) imposed the strictest measures yet, prohibiting gatherings and assemblies prone to disease transmission nationwide, with no allowance for traditional events.

While some announcements explicitly revoked their predecessors (for instance, Announcement No. 6 revokes No. 3 and 5) other announcements were explicitly revoked until the emergency situation was lifted. Consequently, only 10 out of 14 announcements have been officially revoked.

Announcements should not limit assembly beyond the conditions of the Emergency Decree

Under the Emergency Decree, the Prime Minister possesses the authority to issue regulations that prohibit assemblies. However, delegating this power to the Chief of Defence Forces led to numerous and confusing restrictions on gatherings. Despite being a military official without expertise in controlling the spread of COVID-19, the Chief of Defence Forces exploited this special law to arbitrarily control people's expression.

Legally, the Chief of Defence Forces’s announcements cannot impose conditions that surpass wide-spread gathering prohibitions specified in Section 9 and existing regulations. However, many of them exceeded these limitations. For instance, Chief of Defence Forces Announcement No. 6, issued on July 16, 2021 during the enforcement of Regulation No. 24 restricting activities to no more than 50 persons maximum in strict control areas, exceeded its authority by limiting gatherings to only 5 persons.



List of Supreme Commander’s Announcements more restrictive than Emergency Decree

No. of announcement	Date of announcement	To abolish	Duration of enforcement	Reasons claimed to the announcement
Not identified	3 Apr 2020		Phayao Court ruled unlawful	prohibition on the assembly that is risk-prone to transmission of disease or with intention to cause pandemic
Not identified	30 Dec 2020		10 days	prohibition on the assembly at any crowded place that is risk-prone to transmission of disease in the maximum control zones and the control zones.
2	8 Jan 2021	Abolish No.1	Enforces until Emergency Decree was lifted	prohibition on the assembly at any crowded place that is risk-prone to transmission of disease which has a large number of persons and has the chance to easily touch each other in the maximum control zones.
3	No information in the Royal Gazette			
4	19 Feb 2021		152 days	Authorises its center and the Police to prohibit the gatherings
5	5 Mar 2021		134 days	prohibition on the assembly at any crowded place that is risk-prone to transmission of disease which has a large number of persons and has the chance to easily touch each other in Bangkok and perimeter except Samut Sakorn
6	16 Jul 2021	Abolish No.3 and No.5	19 days	prohibition on the assembly that is risk-prone to transmission of disease in Bangkok and perimeter. Prohibition on assembly of more than 5 person
7	20 Jul 2021	Amend Item 3 of No.6	15 days	Amend no.6 to prohibit assembly of more than 5 persons in the maximum and strict control zones
8	20 Jul 2021	Abolish No.4	Enforces until Emergency Decree was lifted	Amend minor issue from no.4
9	3 Aug 2021	Abolish No.6 and No.7	59 days	prohibition on the assembly that is risk-prone to transmission of disease in all areas, limit number of persons under regulation 30.
10	31 Aug 2021	Amend Item 3 of No.9	31 days	Amend no.9 in technical issues and added from regulation 32
11	30 Sep 2021	Abolish No.9 and No.10	29 days	prohibition on the assembly that is risk-prone to transmission of disease in all areas, limit number of persons under regulation 30, 32, 34
12	18 Oct 2021	Amend Item 3 of No.11	11 days	Amend no.11 in technical issues and added from regulation 35
13	28 Oct 2021	Abolish No.11 and No.12	5 days	prohibition on the assembly that is risk-prone to transmission of disease in all areas, limit number of persons under regulation 30, 35, 36
14	1 Nov 2021	Abolish No.13	Enforces until Emergency Decree was lifted	prohibition on the assembly that is risk-prone to transmission of disease in all areas, limit number of persons under regulation 37

On March 10, 2022, the [Phayao Provincial Court affirmed the principle](#) that the Chief of Defence Forces's announcements must not exceed regulation conditions. The court confirmed that the Chief of Defence Forces lacks the authority to issue regulations beyond those specified in Section 9 of the Chief of Defence Forces Announcement dated April 3, 2020, making such prohibitions unlawful and ineffective.

Excessive use of curfew

Often, enforcement of the Emergency Decree has been accompanied by measures aimed at “controlling” the people, such as the declaration of a “curfew,” which restricts individuals from leaving their dwelling places. Curfews have often been implemented in the three southern border provinces, where there is a protracted armed conflict.

The authority to declare a curfew is outlined in Section 9(1) of the Emergency Decree:

In the case that it is necessary to promptly end an emergency situation or to prevent it from escalating, the Prime Minister shall have the power to issue the stipulations as follows:

1) to prohibit any person from departing from a dwelling place within the specific time unless permission is given by a competent official, or the person is exempt from the prohibition

Curfews are mostly in effect at night. People who go out during prohibited times are seen as violating the Emergency Decree, potentially resulting in jail time of up to two years and/or a fine of 40,000 baht. During COVID-19, the government of Gen. Prayut Chan-o-cha, announced curfews for 2 periods:

During the first wave of the outbreak, [Regulation No. 2 on 2 April 2020](#) prohibited any person from leaving their dwelling place between 22:00 p.m. to 4:00 a.m. Later, on 15 May 2020, the time period was changed from 23:00 p.m. to 4:00 a.m. according to Regulation No. 7, dated on 15 May 2020. The time was changed again from 21:00 p.m. to 3:00 a.m. by Regulation No. 9 on 19 May 2020, before the curfew was [revoked on 11 June 2020](#), after 71 days.

During the third wave of the outbreak, Regulation No. 27 on 10 July 2021 prohibited any person from leaving their residence between 21:00 p.m. to 4:00 a.m. in the Bangkok area, Nakhon Pathom Province, Nonthaburi Province, Pathum Thani Province, Samut Prakan Province, Samut Sakhon Province, southern border provinces, including Narathiwat Province, Pattani Province, Yala Province, and Songkhla Province, and another 3 provinces, namely Chachoengsao, Chonburi, Phra Nakhon Si Ayutthaya (following Regulation No. 28 on 17 July 2021).

On 29 September 2021, Regulation No. 34 changed the time to 22:00 p.m. to 4:00 a.m. and Regulation No. 35 from 23:00 p.m. to 3:00 a.m. until this period of curfew was revoked by Regulation No. 39 on 30 November 2021.



2 Years
Emergency
Decree

Excessive use of **CURFEW**



- **Bangkok and the Perimeter**
- **4 provinces in the boarder South**

234 days
(The longest)

-
- **Chachoengsao**
 - **Chon Buri**
 - **Ayuttaya**

227 days

Other Provinces

71 days

The provinces that are in the maximum and strict control zones were under curfew for a total of 163 days, and the additional 3 provinces—Chachoengsao, Chonburi, and Phra Nakhon Si Ayutthaya—were under curfew for at least 156 days.

Curfews generally did not significantly impact political protest because assemblies were not usually held at night. However, curfews did force protests to be held during the day and quickly end between 19.00 to 20.00 to give protesters time to return home.

In general, however, curfews had a huge impact on daily routines, work, occupations, and economic activities of the country, including increasing congestion on public transportation during non-curfew hours. Despite various stated exceptions for activities and occupations that must be performed at night, curfews nonetheless led to [arrests and prosecutions against unhoused people](#), who had no home to return to at night, as well as [arrests of fishermen who normally fish at night](#).

Abuse of the Emergency Decree

1. More severe punishments for protesters

Based on the government's track record enforcing the Emergency Decree and issuing numerous unnecessary regulations curbing public gatherings, it is clear that the state of emergency was used for other purposes besides simply managing the pandemic.



Emergency Decree provides higher penalty for peaceful assembly

Public Assembly Act, 2015	Assembly within the radius of 150 meters from the boundary of the Royal Palace. (Section 7)	Imprisonment for a term of not exceeding six months or to a fine of not exceeding 10,000 Baht or both
	Assembly within the Parliament, the Government House or the Courts. (Section 7 Paragraph 2)	
	Assembly that obstructs gateway of, impede the performance of duties, or hinder access to service (Section 8)	
	Organized a public assembly without notification to authorities (Section 10)	fine of not exceeding 10,000 Baht
Marching with our prior notification (Section 17)		
Not adjourn within the period that notified (Section 18)		
Communicable Diseases Act, 2015	Conducted any activities that are risk-prone to the transmission of the disease	fine of not exceeding 20,000 Baht
Emergency Decree	assembly, or gathering or the commission of any act which may cause unrest (Section 9)	Imprisonment for a term of not exceeding two years or to a fine of not exceeding 40,000 Baht or both



Normally, activists orchestrating rallies are subject to the [Public Assembly Act 2015](#). For activities that draw government disapproval, organizers often face prosecution under Sections 7 and 8 of the Public Assembly Act, especially when gathering in prohibited areas such as the Government House, Parliament, or near the Royal Palace. The maximum penalty for offenders includes imprisonment not exceeding six months or a fine not exceeding 10,000 baht, or both. Additionally, charges under Sections 10, 17, and 18 may apply for failure to notify authorities about the assembly in advance or non-compliance with other conditions, liable to a fine not exceeding 10,000 baht.

Apart from the Public Assembly Act, the [Communicable Diseases Act](#) of 2015 governs epidemics and provides similar powers as the Emergency Act aimed at preventing disease transmission. Penalties in this law include fines up to 20,000 baht.

Having considered the three laws, it is clear that penalties under the Emergency Decree are much harsher than the other two Acts, including significant jail terms and fines. Prosecution for minor offences that, under the other laws, are only punishable via lesser fines, leads to prison overcrowding, potentially worsening social distancing conditions and making outbreaks more likely.

2. Use of Emergency Decree to maintain political power

During the two and a half years in which the Emergency Decree was enacted and continually extended, the government used the Decree excessively to control public gatherings, expression, and activities, rather than as an effective method of epidemic control. Moreover, the Emergency Decree led to the concentration of political power and the government's base as a result of three strategies:

2.1 Concentrating power from a weak coalition government

The Emergency Decree was partly justified by the need to ensure unity and stability in the functioning of the government in terms of management.

Conversely, the 2017 constitution electoral system was designed as a large-but-weak coalition government, with 17 political parties, the largest coalition government in Thailand's history. Under the coalition government system, ministerial seats were allocated according to coalition party quotas. As a result, the Prime Minister from the Palang Pracharat Party, with less than half of the votes in the government, had no authority to command many ministries. The position of Minister of Public Health also belonged to the coalition government and specifically to Anutin Charnvirakul from the Bhumjaithai Party, while the Minister of Commerce position belonged to Jurin Laksanawisit from the Democrat Party.

[General Prayut used the Emergency Decree to centralize power from these ministries and various sectors](#), transferring power and effective command control of government functions to the Prime Minister.

2.2 Exempting government officials from liability

The Emergency Decree eliminates the Administrative Court's inspection mechanism. Section 16 states that regulations, announcements, orders, or actions under this Emergency Decree are not subject to the Act on Establishment of Administrative Courts and Administrative Court Procedure. As a result, Emergency Decree regulations and orders that might affect people's rights cannot be further examined or revoked by the Administrative Court, removing an important check on executive power and judicial protection.

In cases where citizens want to challenge Orders of the Prime Minister, they must file a lawsuit in the Civil Court, which is not designed to serve the disadvantaged. Neither do the judges have expertise in rights and freedoms, or scrutinizing the use of public power; rather they are primarily experts in private property

disputes.

In addition, Section 17 largely exempts public officials from any civil, criminal or disciplinary liabilities if their actions were performed in good faith, non-discriminatory, and were reasonable in the circumstances. Victims may only seek civil compensation.

This lack of accountability serves as a “green light” to civil servants to make public health decisions without fear of liability; unfortunately it also provides a green light to police to prohibit gatherings and use force to disperse protests, with no accountability for any resulting injuries or deaths.

2.3 Increasing benefits, gratuities, and pensions for civil servants

The Government Pension Act allows for special compensation to civil servants in emergency situations if they risk physical threats. Additionally, working during a declared state of emergency counts separately towards the number of years needed to receive a pension (e.g., if a government official has 28 years of regular working hours in the government, the period working under the state of emergency can be added for another two years, for 30 total, the threshold number of years to receive a pension).

In addition, there are regulations of the Ministry of Defense regarding the consideration of special pension during emergencies, B.E. 2529. Soldiers fighting in times of emergency receive a special pension via salary increases or bonuses for fighting.

3. Other laws that can be used to control epidemics

In the 2020-2021 period, there were other laws that could have been used to manage the pandemic; therefore the Emergency Decree was not necessary. Rather, the government could have relied on the following measures:

First: the power to appoint an integrated working group

The COVID response involved the creation of the COVID Situation Management Center, established by [Prime Ministerial Order No. 5/2563](#), comprising ministers from various ministries, civil servants like the Chief of Defence Forces, Commissioner of the Royal Thai Police, and heads of relevant departments. This order, enacted under the Government Administration Act, Section 11 (6), empowered the Prime Minister to appoint individuals for official duties. While the working structure of the Management Center is rooted in normal laws, the Emergency Decree granted the Prime Minister related and additional law enforcement powers not otherwise centralized in normal legal frameworks. However, the powers already envisioned under the Government Administration Act were likely sufficient to effectively manage the pandemic.

Secondly: the power to prohibit assemblies or gatherings

Prohibiting gatherings or assemblies is a special power under the Emergency Decree. However, Section 34 of the [Communicable Disease Act \(CDA\)](#) allows communicable disease control officials to prohibit anyone from doing or taking any action which might promote infectious diseases or epidemics.

For contagious diseases that can spread through close contact, provincial governors already possess the authority to prohibit assemblies that might risk transmission of disease under Section 34. However, under the CDA, authorities cannot blanket prohibit assemblies or limit protest in general. The public health risks should be considered on a case-by-case basis.

Third: the power to close establishments

The Emergency Decree Regulation regarding the closure of places refers to the authority of the

provincial governor under the Communicable Disease Act to order the temporary shutdown of many places, such as markets, food establishments, factories, public gathering places, theaters, and educational institutions, with the approval of the Provincial Communicable Disease Committee.

The Emergency Decree conversely only gives the Prime Minister the power to prohibit entering “any place,” but does not confer the power to close or curtail certain types of businesses and activities, such as restaurants and barber shops. Closure orders for these must still rely primarily on powers under the CDA. Thus, recent orders shutting down certain places to control disease were not based on Emergency Decree powers.

Fourth: the power to close entry points into Thailand

Many laws may be used to control entry into Thailand to prevent disease transmission, in addition to the Emergency Decree. Other laws include the [Air Navigation Act](#), to temporarily prohibit aircraft from flying into Thailand, as well as the Immigration Act, setting conditions of entry for people traveling from high-risk areas.

Section 39 and 43 of the Communicable Disease Act further grant specific authority to communicable disease control officers to oversee passenger and vehicle hygiene and issue various mandatory disease prevention measures.

Fifth: the power to prevent the release of disinformation

The government has many existing measures by which it purports to address disinformation, including the Computer Crime Act, and various provisions of the [Criminal Code](#), such as defamation offenses. The use of the Emergency Decree to further police speech, especially given the government’s track record in suppressing free expression under other laws, is unnecessary and threatens to abridge citizens’ freedoms even more, particularly through harsher penalties than those provided by other laws and the limited scrutiny of government officials’ actions under a state of emergency.

Laws in place without Emergency Decree



Powers under Emergency Decree	Powers in other Laws
Power to appoint an integrated working group	Government Administration Act, Section 11 (6)
Power to issue curfew orders	Communicable Disease Act, Section 34 (Order on specific cases)
Power to prohibit the assembly or the gathering	Communicable Disease Act, Section 34
Power to control the opening or closing of places	Communicable Disease Act, Section 35
Power of the closure of point of entry into the Kingdom	Communicable Disease Act, Section 39-43
Power to prevent the release of fake news	Criminal Code, Section 384

Prosecutions and Verdict Data

During the two-and-a-half-year period in which the Emergency Decree was in force, General Prayut Chan-o-cha issued [12 regulations to prohibit assemblies](#), with variation depending on the fluctuating COVID-19 situation. [15 additional announcements](#) were made to address the political situation and at least 2,200 political assemblies protesting the government's actions in this time period.

Thai Lawyers for Human Rights (TLHR) has found that at least 1,469 people who joined public activities in this time period were charged with defying regulations and announcements under the Emergency Decree, in at least 663 cases. This makes 2020-2022 the period with the highest number of political cases in Thailand's history.

1 year after Emergency Decree was lifted Cases keep going on

Peaceful protestors charged
under defying Emergency Decree

At least

663 cases

196 case ended

188 cases are in courts

279 cases are under investigation



The Emergency Decree provisions allowing for the prohibition of assemblies with little impunity for authorities led to regular use of force by riot police who, without hesitation, used weapons including batons, water cannons, tear gas and rubber bullets against protestors at least 60 times.

After the [Emergency Decree was lifted](#) on 29 September 2022 due to the relaxation of the pandemic crisis, all of the regulations, announcements and orders were also ended. However, prosecutions under these laws continued under normal criminal procedures.

As of 30 September 2022, out of the [663 cases being monitored by TLHR](#), 196 cases were final, 188 cases were underway in the courts, and a further 279 were still under investigation by police or public prosecutors.

For those defendants who were prosecuted and fought to insist their innocence, [the judicial system has delivered at least 184 verdicts](#), dismissing 81 of those cases and providing punishments in another 54 cases. A public prosecutor issued non-prosecution orders for 49 additional cases.

Some of these cases are final, while others are still being fought in the Court of Appeal.

In the 54 cases in which the court found defendants guilty, the court issued fines for 30 defendants. The court further ordered the suspension of prison sentences for 17 cases, and delayed prison sentencing for 3 other cases. The court issued a warning only for one case involving a juvenile. In three additional cases, the court ordered an actual prison sentence without suspension.

Most of the cases went to the Court of Appeal. There were 4 cases where the Court of Appeal changed the verdict from dismissal to guilty, and there was one case in which [the Court of Appeal ordered the Court of the First Instance to rewrite its verdict.](#)

Of the 30 cases that resulted in fines as penalties, half of the fines were between 4,000-6,000 baht, out of the maximum of 40,000 baht. In 10 cases, mostly in Bangkok, the court ordered defendants to pay between 10,000 to 30,000 baht. In the provinces, the Surin Province court ordered a 30,000 baht fine in two cases, while the Nakorn Ratchasima Province court ordered a 10,000 baht fine in one case.

Many of the cases that related to public assemblies had multiple defendants, all of whom had to pay a fine. As a result, defendants under Emergency Decree charges have had to pay fines from their own resources, amounting to at least a cumulative 1,253,332 baht.

In the three cases in which the court sentenced defendants to prison without suspension, there were also charges under other laws besides the Emergency Decree, including allegations under the Lese Majeste law in two cases and an allegation of assault against the authorities in one case.

It is noted that there were many cases from the ‘Car Mob’ protest, where protesters stayed in their vehicles and rallied around cities. This form of protest was designed to keep everyone safe from the risk of COVID-19 infection. However, participants were still charged with defying prohibitions under the Emergency Decree. Out of 34 related cases, the court dismissed 20 and punished defendants in 14 cases.

For the accused under age 18, cases were tried at juvenile court. Out of 12 cases, the juvenile court dismissed 4 and found young defendants guilty in 8 others (juvenile court statistics indicate that punishments are more common than dismissal, unlike in other courts).

Notable Cases

The at least 663 cases related to Emergency Decree charges for participating in political gatherings can be classified into three categories: cases of large assemblies with many participants, small activities unlikely to present major risks of disease transmission, and confrontations between officials and protesters.

Cases of large assemblies

There were many large assemblies between 2020 and 2022, in some cases with more than ten thousand or even a hundred thousand participants. These large assemblies were seen as a risk to stability and challenged the popularity of General Prayut Chan-o-cha’s government.

As a result, large numbers of protesters at these assemblies were prosecuted, including individuals delivering speeches via microphone, stage organizers, people hired to install sound equipment, hired drivers, and more. The widespread arrests punished even those involved in the logistics or organizational aspects of these protests, creating legal burdens and essentially functioning as a form of judicial harassment, with a chilling effect. For example:

1. “Free Youth” protest on 18 July 2021

The Free Youth assembly was held near the Democracy Monument on 18 July 2021. Approximately 3,000 to 4,000 people—including many students—attended and demanded the dissolution of parliament, the amendment of the 2017 constitution, and the end to government harassment of those opposing or criticizing its policies.

Protesters who made speeches and even some musicians at the Free Youth protest were arrested between August and September 2021. At least 12 people were accused of being “leaders” and charged with sedition under Section 116 of the Criminal Code, assembling to cause chaos according to Section 215 paragraph three, and violating the Emergency Decree. [On 12 June 2023](#), the court ruled that the Emergency Decree was meant to stop the transmission of disease and not limit people’s daily routines; moreover, as it was not possible to prove that the defendants were actually the protest organizers, that charge was dismissed. However, the defenders were found guilty under the criminal code provisions, fined 2,000 baht and sentenced to 2 months in prison (later suspended).

Meanwhile, 15 protest participants were prosecuted in another case under the Emergency Decree. On [21 March 2023](#), the court similarly ruled to dismiss the case because the plaintiff could not prove that the defendants organized the assembly, and instead merely claimed that they had seen defendants at the gathering, taking turns giving speeches. The court also noted that the gathering place was an open space with no roof, and therefore an unlikely risk for disease transmission.

2. “Expel tyrants” protest on 11 August 2021

On 11 August 2021, at the [#11AugustRallyChasingDownTheTyrant](#), organized by Talufa Group, between 300 to 500 people attended a rally at Victory Monument near the residence of General Prayut Chan-o-cha. At least 8 people were subsequently prosecuted for assaulting officials, gathering to cause chaos under Section 215, and violating the Emergency Decree.

The court ruled on 2 August 2022 that the defendants were guilty of participating in an activity with more than five people under the Decree, even though the assembly was held in an open area, the air was easily ventilated, and the location was not risk-prone to COVID-19 transmission. Also, the eight defendants were not the organizers of the activity, but were merely participants. However, because the activity took place in the maximum/strict control zone, the court found the defendants guilty, with potential penalties of 1 year imprisonment and a fine of 20,000 baht per person. However, the sentence was suspended, and other charges of related to disturbing public order and obstructing officials were dismissed.

3. The “TaluFa Village” assembly on 28 March 2021

On 28 March 2021 at 5:00 a.m., crowd control police dispersed “TaluFa Village,” an overnight assembly of approximately 200 to 300 participants which had been ongoing for 2 weeks near Chamai Maruchet Bridge, next to the Government House, calling for General Prayut Chan-o-cha to resign. After the dispersal, 67 people were arrested, including 6 youths and 2 monks. All were charged with violating the Emergency Decree and the Communicable Diseases Act.

At 18:00 p.m. on the same day, approximately 50 to 100 people assembled to condemn the dispersal of TaluFa Village without legal authority. Crowd control police dispersed the protest a second time and arrested another 32 people, making the total arrested 99.

As a result of the police’s arbitrary arrests of everyone at the scene without distinction as to whether individuals were organizers, participants, or mere passersby, this case currently has the most defendants and is still ongoing in court.

Cases from small activities

Small-scale political activity involving a handful of participants still served as a basis for charges of violating the Emergency Decree, even though in many cases COVID-19 was a minimal risk. Instead, these cases highlight the government's use of the Emergency Decree to stem political expression. For example:

1. The case commemorating the death of Seh Daeng on 13 May 2020

8 people participated in a memorial activity to light candles near the entrance of Silom MRT station in order to mark the 10th anniversary of the death of Major-General Khattiya Sawasdipol, or “Seh Daeng,” a former pro-democracy activist who was shot dead during a 2010 protest. At the time, Thailand had had no new COVID-19 infections in more than 40 days. Nevertheless, all 8 people were charged with violating the Emergency Decree, marking the Decree's first use to target political activities.

On 29 August 2022, the court ruled that the location of the event was an open space with sufficient social distancing, that the activity was peaceful and did not last that long; therefore, it could not be considered a threat to public health or incitement causing unrest. The judge subsequently dismissed the case.

2. Workers' action on 19 October 2021

Triumph International Labor Union of Thailand helped 1,388 employees of Brilliant Alliance Thai Global Company Limited, the underwear manufacturers, who were abandoned by the company without compensation after the business closed down. The Union traveled to the Government House to demand an urgent solution, and called for the Ministry of Labor to solve the problem by approving the central budget to pay workers first.

Later, [6 labor unionists were prosecuted](#) for violating the Emergency Decree by gathering next to the Government House. This case is still under investigation.

3. Korat Car Mob on 7 August 2021

On 7 August 2021, the Korat Movement gathered in the form of a [Car Mob in front of the Provincial Police Region 3](#) to condemn Bangkok police for using force to violently suppress protesters. The car gathering resulted in two defendants being charged with “organizing an activity which consisted of more than 5 people without permission from communicable disease officials,” as well as violating the Emergency Decree, the Communicable Disease Control Act under Section 34, and the Nakhon Ratchasima Province Order.

On 21 June 2022, the court found that in this case, there were only 24 protesters, most of whom wore masks while moving around and did not stand next to each other. Moreover, the gathering place was a wide-open area with good ventilation, and the protest lasted only 24 minutes total. Finally, after the gathering there were no reports that anyone involved was subsequently infected with COVID-19. Given that the plaintiff failed to show that the gathering posed a risk of spreading COVID-19, the judge dismissed the case.

Confrontations between protesters and police

In 2021, police used severe measures to suppress protests, deploying force to arrest protesters, and weapons and violence to disperse crowds. Police use of force made future protests more intense and risk-prone, due to widespread discontent as a result of these abuses of authority. As a result, protests had a greater likelihood of degenerating into riots. Consequently, the period between August and September 2021 saw at least [528 injured people](#), 146 injured police officers, the death of one protester and blinding of two others, and injuries of 29 journalists.

Police typically used the Emergency Decree as an excuse to disperse demonstrations. They also frequently claimed that protesters were committing a crime by violating health measures, whether or not there was evidence to that effect. Without the use of this special law, and the impunity it provided, police may not have been able to disperse or arrest unarmed protesters. For example:

1. A large Car Mob expels tyrants on 10 August 2021

On 10 August 2021, the United Front of Thammasat and Demonstration called for a Car Mob to occur at King Power Mall, Soi Rang Nam, through the route around Din Daeng intersection. After the rally ended at 5:00 p.m. some protesters insisted on staying in the area and confronted the crowd control police who had lined up to block the Car Mob from moving to the residence of General Prayut Chan-o-cha. Police fired tear gas and rubber bullets at protesters from the roadway between 17.00 and 19.00, while protesters fought back with rocks and fireworks. At least 47 people were arrested, 20 of whom were prosecuted for violating the Emergency Decree.

On 13 March 2023, the court ruled that the 20 defendants were only participants in the incident. None of the plaintiff's witnesses knew who the actual leader or organizer of the protest was. Therefore, the action of the 20 defendants was not an offense according to the charges.

2. Mass arrest at Din Daeng accommodation on 7 October 2021

After a policeman was shot in the middle of the night on 6 October 2021 at Din Daeng Triangle, police later surrounded and searched Din Daeng accommodation on 7 October, trying to track down the perpetrator. They subsequently arrested protesters and passersby in that area, leading to the prosecution of 34 individuals, including 18 adults and 16 youths.

The adults were charged with violating the Regulation under the Emergency Decree related to organizing activities with more than 25 people, which risked disease transmission and violated the curfew.

On 31 May 2022, the prosecutor declined to prosecute this case, reasoning that there was no witness who had seen or confirmed that the 11 suspects joined the group of persons that organized the protest or engaged in any high-risk disease transmission activities. Rather, the 11 suspects were arrested merely for being in the vicinity around the time of the incident.

3. Arrests due to proximity near gathering area on 13 September 2021

The police charged 8 people who were near the Din Daeng intersection where protesters confronted the police on 11 September 2021. Defendants had been engaged in different activities. Two defendants had driven a car to distribute food for people in the area, while another had distributed drinking water and set up a first-aid tent. Another had driven his motorcycle to the area and held up a royal portrait of King Rama IX with the message "Prayuth, Get out," while he was told by one of the prior defendants, who deemed his message inappropriate, to leave. Three others had merely been standing near a construction camp by the protest.

On 7 July 2022, the public prosecutor dismissed all 8 cases, noting that violation of this Regulation entailed actually organizing the activity or the gathering. Since it appeared that none of the defendants were protest leaders involved in blocking the road or engaged in any action leading any officer to be injured, there was no basis for the case.

Precedents from Court Verdicts

As of 30 September 2023, [courts throughout Thailand had dismissed 81](#) out of the 184 cases related to political demonstrations.

In most cases, the Court dismissed due to lack of evidence that the defendants actually contributed to COVID-19 risk – for instance, in cases where demonstrations took place in an ‘open space’ where there was no risk of spreading the disease, especially where defendants were not organizers, just ordinary citizens. Many cases relating to the Emergency Decree establish useful precedent and legal standards which can be used for interpreting the Decree and future emergency legislation to help safeguard civic freedoms and the right to free expression and assembly of the people.

Dusit District Court: Emergency Decree should not be used to suppress political protests

On [23 January 2023](#), the Dusit District Court dismissed the case of Chonthicha Jaengraew, a political activist who was prosecuted for organizing #FreeYouth Mob – a large gathering between 20,000 to 30,000 people – at Ratchadamnoen Klang Road by the Democracy Monument on 16 August 2020.

The judgment found that various Regulations issued under the Emergency Decree to deal with the spread of COVID-19 directly affect the basic rights of the people, limiting their freedoms to express their opinions and engage in peaceful assembly. The Court considered the true purpose of enforcing this law, noting that law enforcement must be aimed at preventing the spread of the coronavirus, not suppressing protesters or prohibiting political gatherings without justification.

The Court also found that the organizers and participants wore masks and implemented adequate pandemic safeguards; moreover, the number of infected people in Thailand at the time of the protest was zero. Therefore, the defendant’s gathering was a peaceful public gathering, protected under the Constitution.

Dusit District Court: Emergency Decree Regulations do not preclude crowded assemblies

On 14 March 2023, the Dusit District Court issued a verdict for a second case against Chonthicha Jaengrew, for organizing a commemorative activity on 22 August 2020 entitled “Poetry, Music, Liberation, Searching for Missing Persons” in front of the 14 October 1973 Memorial.

The Court found that the Regulations issued under Section 9 of the Emergency Decree stipulate that an assembly, activity, or gathering at any crowded place is prohibited – however, the Decree does not specifically prohibit crowded assemblies themselves. Since the gathering was not in a crowded place, the defendant’s action was not an illegal assembly.

The prosecution further attempted to claim that the defendant had violated an announcement issued by a government official responsible for issuing emergency regulations. However it was not established that the Prime Minister had authorized this regulation, therefore this charge also failed.

South Bangkok District Court: opposing the Myanmar coup is democratic expression

On 30 January 2023, the South Bangkok District Court issued a verdict for three activists prosecuted in the case of the #StandWithMyanmar assembly in front of the Myanmar Embassy, opposing the 1 February 2021 coup of General Min Aung Hlaing.

The Court found that while protesters had gathered on the sidewalk and blocked traffic lanes, there

were nevertheless two empty lanes of traffic through which cars could move. Moreover, the protest took place in a public, open, uncrowded area, and the protesters social distanced and had space to move around. There was no disorder, and the protesters resisted the coup via peaceful political expression. Lastly, the defendants were not at the scene when the protest was dispersed. Therefore, the Court found that the defendants had not committed any offenses under the Emergency Decree.

Pathumwan District Court: Chief of Defence Forces' Announcements cannot limit rights and freedoms beyond the law

On 22 February 2023, the Pathumwan District Court issued a verdict in the case of 4 activists participating in an #AntiPoliceCorruption protest on 23 February 2021, which marched from Ratchaprasong Intersection to the Royal Thai Police Headquarters in order to protest the illegal appointment of high-ranking police officers.

Based on the prosecution witnesses' testimony, approximately 500 protesters gathered, causing overcrowding. However, the prosecutors could not clearly demonstrate that overcrowding risked disease transmission. Most protesters wore masks and social distanced, and the assembly was peaceful and orderly. The Court found that the assembly was protected under the rights and freedoms accorded by the Constitution.

Phayao Provincial Court: Chief of Defence Forces' Announcement is unlawful and was enforced beyond its authority

On 10 March 2022, Phayao Provincial Court dismissed the case #PeopleFromPhayaoDon'tWantPower. Four people were prosecuted under the Emergency Decree for holding a rally criticizing government failures in front of the University of Phayao on 27 July 2020. Defendants were charged for gathering and risking disease transmission in a crowded place, along with committing acts which caused unrest, supposedly violating the 3 April 2020 Announcement by the Leader Responsible for Resolving Emergency Situations relating to National Security.

The Court found that even though this Regulation delegated authority around regulating assemblies for public health purposes, such regulatory measures must have the same characteristics as organizing guards and setting up checkpoints to prevent such actions. The Chief of Defence Forces was not authorized to issue additional regulations regarding the nature of prohibited assemblies; therefore, the Announcement of the Chief of Defence Forces as far as prohibiting an assembly, an activity, or gathering that risked disease transmission was not legal and was therefore inapplicable.

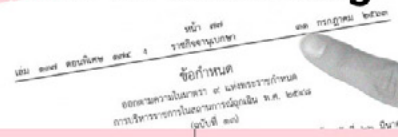
People's Challenges to the Assembly Prohibitions

During the strict enforcement of the Emergency Decree limiting basic rights and free assembly, many people asked the judicial system to examine this absolute executive power, submitting cases against the regulations and announcements. Due to Section 16 of the Emergency Decree stating that the Administrative Court does not have jurisdiction over these emergency measures, all cases were tried at the Civil Court, despite the Civil Court typically only trying cases related to private property and disputes.

Many cases did not succeed due to the lack of capacity of the Civil Court to adjudicate arguments on public laws. The below are some examples of people's unsuccessful attempts between 2020 to 2022.

THE TOTAL CASES FILED AGAINST THE STATE

to revoke the restrictions on “freedom of assembly” under the Emergency Decree



THE PLAINTIFF	THE CLAIM	REASON	THE RESULT OF THE CASE
People Go Network	Revoke the regulations No.1	Unreasonably limit freedom of expression	The court disposed of the case because the regulation was abandoned before
Mass media	Revoke the regulations No.29	Limit the freedom of press	The court disposed of the case because the government abandoned the regulation
Atthaphon, Waddao and Yingcheep	Revoke the regulations No.15 and the Announcement by the Leader Responsible for Resolving Emergency Situations relating to National Security No.3, No.5, and No.11	Limit freedom of expression and obstruct the people movement	The case was dismissed, and it is currently under appeal.
Panassaya, Benja, Seksit and Kuljira	Revoke the Regulations No.15 , Section 3 and the Announcement by the Leader Responsible for Resolving Emergency Situations relating to National Security No.12	Limit freedom of expression and obstruct the people movement	The case was dismissed because the court viewed the restriction on freedom of expression as reasonable. The plaintiff does not appeal.
Student representatives and University students	Revoke the Regulations No.47 and the Announcement by the Leader Responsible for Resolving Emergency Situations relating to National Security No.15	Increase the rate of penalty for protesters without legal authority	The trial is ongoing
No NPO Bill Network	Revoke the Regulations No.15, Section 3 and the Regulations No.37 , Section 2 and the Announcement by the Leader Responsible for Resolving Emergency Situations relating to National Security No.14	Limit freedom of expression and obstruct the people movement	The trial is ongoing

People Go Network: “No assembly” restrictions unreasonably limit the freedom of expression

The request: Revoke the Emergency Decree extension and Regulations under Emergency Decree No.1

On 9 July 2020, civil society representatives from the ‘People Go Network,’ including Nimit Thianudom, Saengsiri Treemankha, Nattawut Uppa, Wasin Phongkao and Abhisit Sarnapaphan, filed a lawsuit in Civil Court against the extension of the Emergency Decree. Based on free assembly protections under Section 44 of the Constitution and the fact that there had been no new Covid-infected patients in the country

for at least 43 days, the suit called for the revocation of Regulations under Emergency Decree No.1 prohibiting assemblies. The plaintiffs argued that the situation had improved and there was no need for the Emergency Decree, especially since the Communicable Diseases Act and other laws could be exercised instead.

On 5 August 2020, the Court stated that the Regulation issued under Emergency Decree No.13, Section 1 effectively allowed those five plaintiffs to regain their freedom of assembly, and therefore there was no reason to continue the case. However, General Prayut Chan-o-cha subsequently issued even more extensive regulations to limit assembly.

Mass media sues the government for “shutting down the internet,” claiming that news dissemination is pivotal among pandemic crises

The request: Revoke Regulation No.29 issued under Section 9 of Emergency Decree

On 2 August 2021, 12 media outlets and individuals, including The Reporters, VoiceTV, The Standard, The Momentum, THE MATTER, Prachatai, DemAll, The People, Way Magazine, echo, PLUS SEVEN and Beer People sued to revoke the Regulation issued under Emergency Decree No. 29 prohibiting news dissemination which creates ‘fear among the general public,’ and gave the National Broadcasting and Telecommunication Commission (NBTC) authority to restrict access to the internet through ISPs. Plaintiffs argued that prohibiting content ‘causing fear among the general public’ was too broad and restricted the freedom of press and expression, and the people’s rights to information in a critical pandemic situation.

Issued under Section 9 of the Emergency Decree, Section 2 of Regulation No. 29 gave the NBTC authority to order internet service providers to examine IP Addresses and restrict internet service. Plaintiffs and expert witnesses testified that Regulation No. 29 restricted freedom of expression, press and people’s right to access information. Providing accurate, balanced, and comprehensive information was a critical function of a free press during the COVID-19 pandemic.

After the lawsuit was filed, the Court temporarily suspended the Regulation, leading General Prayuth to unilaterally revoke the Regulation the following day. This case therefore represents a win for people fighting to take back their freedoms.

Yingcheep, Krooyai Waddao: No one has ever contracted COVID-19 from an assembly, and the Regulation is a continuous rights violation

The request: Revoke the Regulations of the Prime Minister issued under Section 9 of The Emergency Decree No. 15 and the Announcements No. 3, No. 5 and No. 11 of the Chief of Defence Forces

On [5 October 2021](#), “Pow” Yingcheep Atchanont from iLaw, “Waddao” Chumaporn from the Feminist Liberation Group, and “Kruyai” Atthaphon Buapat from People Khong Chee moot group filed a lawsuit in the Civil Court calling to revoke the Regulation issued under Section 9 of Emergency Decree No. 15, regarding the “prohibition of the assembly of persons which is risk-prone to the transmission of the disease” and Announcements No. 3, No. 5, and No. 11 of the Chief of Defence Forces. The lawsuit charged that the regulations violated freedom of peaceful assembly, and that existing laws were sufficient to address the pandemic. The plaintiffs also argued that the regulations were not meant to control COVID-19 but to preserve military leaders’ political power.

On 25 July 2023, the Civil Court dismissed the case on the grounds that freedom of peaceful assembly is not an absolute right. According to the 2017 Constitution, restrictions on freedoms are allowed by virtue of legal provisions prescribed to maintain state security, public safety, order, good morals of the people, and protection of the rights or freedoms of other people. The Court noted that General Prayut Chan-o-cha issued the Regulations during the outbreak of a new coronavirus strain, for which no cure was available, and in which it was necessary to adopt measures to monitor risk-prone gatherings.

Following witness testimony from the National Security Council and the Disease Control Department, the Court found that pandemic measures were determined jointly by committee and generally enforced, not selectively applied to only the plaintiffs or protests. Since the assembly in which the plaintiffs were involved could cause COVID-19 transmission, the Regulations were therefore found legal. The plaintiffs subsequently filed an appeal to the Appeal Court.

Rung, Benja and Ae Seksit: The government uses disease as an excuse to control large groups and shut down roads without authority

The request: Revoke the Regulation of Prime Minister issued Under Section 9 of the Emergency Decree, No.15, Section 3 and the Announcement by Chief of Defence Forces No.12

On [29 October 2021](#), youth activists Rung-Panasaya Sitthijirawattanakul, Benja Apan, and Ae-Kuljira Thongkong and Seksit Yaemsanguansak sued to revoke the Regulation issued under The Emergency Decree No.15, Section 3 and Announcement No. 12 of the Chief of Defence Forces, on the grounds that these measures violated free assembly and expression. The plaintiffs were prosecuted multiple times under these laws.

On 14 March 2023, the Civil Court dismissed the case via similar arguments, noting that the emergency was necessary to respond to COVID-19, and that freedom of assembly could be restricted by virtue of the 2017 Constitution, Section 44, Paragraph 2. As long as such regulations were enforced against the general population and not in a discriminatory manner against any particular person or group, such restrictions were deemed a reasonable restriction of freedom, consistent with the rule of law. The court also noted that the Announcement was abandoned when the situation began to improve, leading to the cessation of new prosecutions under the Regulations and Announcement.

University students demanded that the Emergency Decree stop being used to increase sentences for protesters

The request: Revoke the Regulation of the Prime Minister Issued Under Section 9 of The Emergency Decree No. 47 and the Announcement of the Chief of Defence Forces No.15

On 22 August 2022, representatives of students organizations² collectively filed a lawsuit asking the Civil Court to revoke the Announcement by the Chief of Defence Forces No. 15 and institute temporary protections to conduct the trial.

On 27 July 2022, the Prime Minister issued Regulation No. 47, prescribing that the measures for organizing and notifying authorities about an assembly as specified in the Public Assembly Act would be applied. Next, on 1 August 2022, the Chief of Defence Forces issued Regulation No. 15 entailing that anyone who failed to comply with Regulation No. 47 would be punished with imprisonment not exceeding 2 years or a fine not exceeding 40,000 Baht or both. However, the punishment for not complying with the Public Assembly Act had a much less severe penalty. The announcement was considered to be an order that increased both “prohibitions” and “duties” for protesters, where the Chief of Defence Forces had no authority to issue such the announcement. The case is ongoing under the Civil Court.

2 Janisa Saengarun, the President of the Thammasat University Student Organization, Pasin Yindee, the leader of Thammasat University Student Council, Siraphob Attohi, the member of Chulalongkorn University Student Club Administrative Organization, Vachiravit Tedsrimuang, the President of Khon Kaen student councils

‘NO NPO Bill’ Network called for revocation of rules restricting freedoms in order to achieve disease prevention

The claim: Revoke the Prime Minister’s Regulation issued under section 9 of Emergency Decree No. 15, Section 3 and No. 37, Section 2, along with the Announcement No. 14 of the Chief of Defence Forces

On 26 May 2022, the Network opposing the draft bill restricting civil society sued General Prayut Chan-o-cha and others by stating that in the past, the plaintiffs were prevented from exercising their freedom to assembly due to the regulations issued under Section 9 of Emergency Decree No. 15, Section 3 and No. 37, Section 2, as well as Announcement No. 14 of the Chief of Defence Forces. Both rules were argued to be illegal limitations of the freedom of assembly, using the pandemic as an excuse.

Moreover, police officers blocked public routes using barbed wire and steel fences, while the plaintiff and citizens attempted to gather to exercise their freedom of assembly during the rally in front of the United Nations and the Government House. The case is ongoing under the Civil Court.

Legal analysis

The continuous weaponization of the Emergency Decree against protesters created a common awareness that protesting would be accompanied by a high risk of prosecution, especially for those holding up microphones and speaking, stage organizers, sound checkers and facilitators. It was clear that protesters were at risk even if gatherings were peaceful and speeches did not violate anyone’s rights.

In the early period of arrests, protesters attempted to mobilize against this suppression of the right to free assembly, holding protests in support of political defendants in front of police stations. Unfortunately, protesters were often arrested at those protests as well. After protest organizers were prosecuted in 10 to 20 separate cases, protest participants became more cautious and often avoided appearing on stage or anything that would make them look like organizers. The chilling effect of the arrests gradually decreased the number of participants and presented practical difficulties to holding protests.

Moreover, the legal process of fighting charges created a huge burden on the accused, their lawyers, and personnel in the judicial process, and acted as an additional disincentive for future would-be protesters or protest organizers. This is especially so as political protesters are still facing lawsuits today, despite the change in government and significant decrease in demonstrations between 2022 and 2023. Political protesters fighting specious charges for merely exercising their right to free assembly and expression are in many cases juggling multiple cases, resulting in lost work, financial burdens, missed classes, and other major impediments to all those except the most privileged.

Even though few cases under the Emergency Decree have resulted in jail time, the chilling effect created merely by the arrests themselves, plus the subsequent judicial burdens, will continue to affect Thai people’s decisions to exercise freedom of assembly, with consequent impacts on democratic governance.

Illegality

Freedom of assembly allows the state to limit basic rights on the basis of laws related to national security, public safety, public order or good morals, or for protecting the rights or liberties of other persons, according to the Constitution of the Kingdom of Thailand, Section 44, paragraph two. However, the enacted law is lawful only if it complies with the principle of reasonableness. It must not unreasonably limit freedom of assembly or restrict it in any manner that would disallow assemblies from taking place.

Under the Emergency Decree, many regulations around assembly aimed to “completely prohibit assemblies” in order to prevent the spread of the COVID-19 virus. Even though the purpose of enacting this law is constitutionally legitimate, its overbroad nature is an unreasonable, disproportionate restriction on rights and freedoms.

In an epidemic situation, people still have the freedom of peaceful assembly, which the state has the duty to protect and facilitate while simultaneously balancing this right with public health measures. It can also be seen that the [government allowed certain gatherings](#)³ while prohibiting others related to dissent; such assembly prohibition is discriminatory.

This kind of Regulation should therefore be contrary to the Constitution. However, there is still no court judgment daring to point out this issue.

Contrary to international principles

Thailand is a member state of International Convention on Civil and Political Rights (ICCPR), which guarantees the right to freedom of assembly. However, ICCPR section 21 also provides legitimate grounds on which the right of peaceful assembly may be restricted, including ‘public health’. Guidelines to interpret the Section 21 are therefore essential to determine whether the situation in Thailand was contrary to international standards.

A [joint report](#) of the United Nations (UN) Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies issued on 4 February 2016 states that any restrictions of assemblies must have a legitimate and formal basis in law, as must the mandate and powers of the restricting authority:

Laws governing State conduct in relation to assemblies should be drafted unambiguously and should incorporate legality, necessity and proportionality tests. Laws should state clearly the body with authority and responsibility for receiving and responding to notifications, which should be independent of undue interference. This body should not be granted excessive discretion: the criteria upon which it can impose restrictions should be publicly available and must accord with international human rights law and standards.

A [report of the Special Rapporteur](#) on the rights to freedom of peaceful assembly and of association on 21 May 2012 also states that

any restrictions imposed must be necessary and proportionate to the aim pursued. Reference to the proportionality test is found in legislation governing peaceful assemblies in a number of countries, including New Zealand and Switzerland. In addition, such restrictions must be facilitated within “sight and sound” of its object and target audience, and “organizers of peaceful assemblies should not be coerced to follow the authorities” suggestions if these would undermine the essence of their right to freedom of peaceful assembly.

The United Nations Human Rights Council (UNHRC) further adopted [Resolution No. 44/20](#) on 17 July 2020 regarding the promotion and protection of human rights in the context of peaceful assembly, and

underlining that considerations such as the health risks posed by the COVID-19 pandemic should not be used to restrict human rights and fundamental freedoms, such as the rights to freedom of peaceful

³ For examples; A gathering to ‘Protect Monarchy’ and collecting signatures to protect Lese Majeste law on 7th November 2021. <https://www.mobdatathailand.org/case-file/1636705578621/> or a protest against ‘Amnesty International Thailand’ and the support of Lese Majesty law on 29th November 2021 <https://www.thairath.co.th/news/politic/2253460>

assembly, of expression and of association, in an unnecessary or disproportionate manner, and that any restriction of human rights guaranteed by international instruments must fulfil the strict requirements laid down in those instruments.

Clement Voulé, UN Special Rapporteur on the right to freedom of peaceful assembly and association, has highlighted relevant human right principles on [the website of the UN Office of the High Commissioner for Human Rights \(OHCHR\)](#) as follows:

It is imperative the crisis not be used as a pretext to suppress rights in general or the rights to freedom of peaceful assembly and of association in particular. The crisis is no justification for excessive force to be used when dispersing assemblies, nor for disproportionate penalties to be imposed. It is vital that any limitations imposed be removed and that full enjoyment of the rights to freedom of peaceful assembly and association be restored when the public health emergency caused by COVID-19 ends.

Therefore, even though ‘public health’ is one of the grounds by which freedom of assembly may be limited, any such limitation must be justified, proportionate, and tailored as narrowly as possible to achieve the necessary public health objectives. As COVID-19 is preventable via the wearing of face masks and vaccines, any measures to prohibit people’s fundamental freedoms must also be necessary and proportionate. Having ambiguous prohibitions that keep enforcing heavy penalties, with a clear political agenda is a violation of international standards and human rights law.

Caselaw in other countries further exemplifies standards around freedom of assembly. For instance, the German Federal Constitutional Court laid down the principles of freedom of assembly and allowable restrictions in the Brokdorf case (BVerfGE 69, 315, 342), noting the following:

- Prohibiting an assembly or dispersing a crowd must be the ultima ratio, only after other measures that are less impactful on the exercise of rights and freedoms have been taken. Any restrictions on assembly must only be to protect other constitutional values that may be directly harmed by the exercise of freedom of assembly. The principle of reasonableness in limiting freedom of assembly must always be considered.

- In the performance of the police and administration related to public assembly, the “friendly-conduct principles of assembly” must be followed. The police and administration must make efforts to coordinate with the organizers of the demonstration as much as possible. Regardless, even if protesters do not coordinate, police or the administration must refrain from using legal measures that affect freedom of assembly as much as possible.

With regard to the restriction of freedom of assembly during the COVID-19 pandemic, the German Federal Constitutional Court ruled in the case BVerfG 1 BvR 828/20 on 16 April 2020 that:

- Absolutely or completely prohibiting the assembly during the COVID-19 outbreak is contrary to the principle of necessity. This is a principle that calls for the state to choose measures that are the least restriction of people’s basic rights. Therefore, the absolute prohibition on the assembly is contrary to the constitution.

- The state must therefore choose measures that are less restrictive in limiting people’s basic rights. At the same time, measures must be designed to actually achieve the objective of controlling the epidemic. This is to protect freedom of assembly and the other interests of citizens at the same time.

If Thailand respects and abides by international law related to both free association and public emergencies, it should not be enforcing its Emergency Decree to suppress protesters in the manner indicated in this report. Thai courts consequently have the power and duty to adjudicate the misuse of the Emergency Decree and any provisions that may be incompatible with international law.

Recommendations and Conclusion

Laws designed to curb an outbreak should never be used to violate the freedom of assembly and prosecute peaceful protesters. Unfortunately, this is precisely what has happened under the administration of General Prayut Chan-o-cha, who rose to power via a military takeover and illegitimately retained his post. In this legally hostile environment, the government has regularly used both the Emergency Decree and the preceding Order and Announcement of the National Council for Peace and Order (NCPO) to curtail the freedom of assembly.

There currently exist legal, legitimate avenues to end the unjust prosecution of people exercising their right to peaceful assembly. As part of its lifting of the state of emergency, the government should have issued a final regulation annulling all prior Regulations, Announcements, and Orders on the basis of the pandemic's end.

Unfortunately, in the Regulation issued on 29 September 2022, Prayut only ordered that all the Regulations, Announcements, and Orders would cease being enforced in the future, but failed to negate their retroactive effect, thereby allowing cases to continue. In practice, therefore, police, prosecutors, and courts have continued to pursue cases brought on the basis of the Emergency Decree, even though the Decree itself is no longer in effect.

According to the current legal system, there are four ways to stop these prosecutions:

- 1) Judicial actors could end the prosecution themselves: Prosecutors have the authority to indict or not indict in cases in which prosecution is not in the public interest. The court could also dismiss or dispose of cases without considering the details, if the cases are considered burdensome to all parties. Lastly, the court could rule that the Regulations or Announcements issued under the Emergency Decree are illegal and thereby end all the cases.
- 2) The new administration could issue a Cabinet Resolution to reaffirm its commitment to end cases brought under the Emergency Decree. A Cabinet Resolution is equal in hierarchy to the Regulations issued under the Emergency Decree. While it may not have legal effect, such a Cabinet Resolution could encourage the police and prosecutors to not indict charged individuals, which would reduce the number of cases stuck in the investigation process by about a third.
- 3) The new parliament could pass an amnesty bill, already discussed several times among parliamentarians, to stop all prosecutions stemming from prior protests. While it is mutually agreed across parties that prosecutions under the Emergency Decree should be stopped, disagreement over whether the amnesty would also include those charged under Section 112 (lese majeste/royal defamation) has kept the bill from progressing.
- 4) The new parliament could amend or repeal the Emergency Decree, specifically Section 9 which grants the prime minister authority to issue Regulations on assembly and Section 18, stipulating penalties for violations. If the existing legislation is amended or repealed, the ongoing cases would be dismissed. While [there have been proposals to replace the Emergency Decree with an Act](#), the parliament has yet to approve any of them.

Judicial actors, the cabinet, or the parliament all have the authority to stop prosecutions under the Emergency Decree. All four channels could be exercised simultaneously, while even one could sufficiently alleviate the legal burden of those exercising their right to freedom of assembly. Such action would be an important step in protecting the right to free expression and freedom of peaceful assembly, and ensuring Thailand's compliance with its international legal obligations.

