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**JOINT SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS  
AND THAI LAWYERS FOR HUMAN RIGHTS IN ADVANCE OF THE  
EXAMINATION OF THE KINGDOM OF THAILAND'S SECOND PERIODIC  
REPORT UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON  
CIVIL AND POLITICAL RIGHTS**

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*Thai Lawyers for Human Rights (TLHR), a coalition of human rights lawyers and defenders, formed immediately following the May 2014 coup d'état in Thailand. The collective's aim has since been to raise awareness about human rights violations resulting from the imposition of Martial Law and military rule in the country. The organization runs a 24-hour hotline and uses the information gathered to disseminate public awareness and advice for those summoned or arrested. TLHR provides free litigation and legal assistance for vulnerable people whose rights have been affected by Martial Law and who do not have legal representatives.*

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P.O. Box, 91, Rue des Bains, 33, 1211 Geneva 8, Switzerland  
Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 –  
Website: <http://www.icj.org> E-mail: [info@icj.org](mailto:info@icj.org)

# **Joint Submission of the International Commission of Jurists and Thai Lawyers for Human Rights to the Human Rights Committee in advance of the examination of the Kingdom of Thailand's Second Periodic Report under Article 40 of the International Covenant on Civil and Political Rights**

## **I. Introduction**

1. The International Commission of Jurists ('ICJ') and Thai Lawyers for Human Rights ('TLHR') welcome the opportunity to contribute to the UN Human Rights Committee's ('the Committee') review of the implementation of the International Covenant on Civil and Political Rights ('the Covenant') by the Kingdom of Thailand ('Thailand'), including in light of the State Party's second periodic report under Article 40 of the Covenant.<sup>1</sup>
2. In the present submission, the ICJ and TLHR wish to draw the Committee's attention to the following issues: Constitutional and legal framework within which the Covenant is implemented (Article 2); States of emergency (Article 4); Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment (Articles 2 (3), 6 and 7); Right to liberty and security of the person, treatment of persons deprived of their liberty, right to a fair trial and independence of judiciary (Articles 7, 9, 10, 14 and 17); and Freedoms of expression and association and right to peaceful assembly (Articles 9, 17, 19, 21, 22 and 25).<sup>2</sup>

## **II. Constitutional and legal framework within which the Covenant is implemented**

3. Thailand's Constitutional and legal framework, which has been significantly altered following the 22 May 2014 military *coup d'état*, restricts the rights guaranteed under the Covenant in an impermissible manner.

### Interim Constitution

4. From 20 May 2014, the Thai military, using the name "the National Council for Peace and Order" ('NCPO'), progressively replaced civilian power with military rule including by: implementing Martial Law throughout the country;<sup>3</sup> staging a *coup* on 22 May 2014;<sup>4</sup> dissolving the civilian government; suspending the 2007 Constitution (except for the Chapter that deals with the Monarchy) and replacing it with an interim Constitution that gives the military ultimate power over the country;<sup>5</sup> providing enhanced criminal investigation powers to military officers;<sup>6</sup> and extending the jurisdiction of military courts to civilians for certain

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<sup>1</sup> In April 2016, the ICJ and TLHR made a joint submission to the Committee in view of its preparation of a List of Issues for the examination of the Second Periodic Report of Thailand under Article 40 of the Covenant, in which they raised concerns about Thailand's compliance with its obligations under Articles 2, 4, 6, 7, 9, 14, 19 and 21 of the Covenant, [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT\\_CCPR\\_ICO\\_THA\\_23559\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_ICO_THA_23559_E.pdf).

<sup>2</sup> These issues correspond to the headings of the List of Issues the Committee, CCPR/C/THA/Q/2, 12 August 2016.

<sup>3</sup> Thailand: authorities must revoke Martial Law, restore media freedom, ICJ, <http://www.icj.org/thailand-authorities-must-revoke-martial-law-restore-media-freedom/>.

<sup>4</sup> A reckless coup in Thailand, ICJ, <http://www.icj.org/a-reckless-coup-in-thailand/>; Thailand: ICJ condemns military coup, ICJ, <http://www.icj.org/thailand-icj-condemns-military-coup/>.

<sup>5</sup> Thailand: interim Constitution seems to ignore key pillars of rule of law, ICJ, <http://www.icj.org/thailand-interim-constitution-seems-to-ignore-key-pillars-of-rule-of-law/>.

<sup>6</sup> Thailand: Human rights groups condemn NCPO Order No. 13/2559 and urge for it to be revoked immediately, ICJ, <https://www.icj.org/thailand-human-rights-groups-condemn-ncpo-order-132016-and-urge-for-it-to-be-revoked-immediately/>.

offences.<sup>7</sup>

5. On 22 July 2014, the NCPO promulgated an interim Constitution, giving the NCPO sweeping, unchecked powers inconsistent with the fundamental pillars of the rule of law, the separation of powers and human rights, including equality, accountability, and predictability of the law.<sup>8</sup> Article 44 of the interim Constitution gives the Head of the NCPO unfettered power to give any order deemed necessary for "...the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the Monarchy, national economics or administration of State affairs..."

*Orders not subject to legal review*

6. Under the interim Constitution the orders and announcements of the NCPO and its Head are not subject to judicial review. Article 47 provides that all NCPO announcements and orders given since the *coup* and up until the Cabinet takes office "...regardless of their legislative, executive or judicial force..." are also "...deemed to be legal, constitutional and final."
7. Thai courts have interpreted Article 47 as preventing them from judicially reviewing NCPO orders and announcements. For example, the Bangkok Military Court, in a number of decisions following challenges to its jurisdiction over civilians under NCPO Announcements No. 37/2557 and 38/2557, held that all NCPO orders and announcements are final and therefore binding on the Court citing Article 47.<sup>9</sup> In August 2015, the Central Administrative Court dismissed the petition of a politician requesting the Court to revoke a NCPO order banning 155 people from traveling abroad. The Court justified its ruling citing Article 47 of the interim Constitution.<sup>10</sup>
8. Article 44 of the interim Constitution also states that any order issued under Article 44 - known as a "Head of the NCPO ('HNCPO') Order" "...is deemed to be legal, constitutional and final..." As with general NCPO orders and announcements, Thai courts have refused to review the legality and constitutionality of orders issued under Article 44.
9. In August 2015, the Central Administrative Court dismissed a lawsuit filed by a private citizen to revoke HNCPO Order No. 24/2558 addressing illegal, unreported, and unregulated fishing. On 4 November 2016, the Supreme Administrative Court dismissed a challenge to HNCPO Order No. 4/2559 regarding the exemption from enforcement of the Ministerial Regulation determining central city plan for certain business types. In both cases, the courts held that Article 44 states that HNCPO orders shall be legal, constitutional and final.<sup>11</sup>

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<sup>7</sup> Thailand: End prosecution of civilians in military tribunals, ICJ, <https://www.icj.org/thailand-end-prosecution-of-civilians-in-military-tribunals/>.

<sup>8</sup> Unofficial English translation, please see: <http://lawdrafter.blogspot.com/2014/07/translation-of-constitution-of-kingdom.html>.

<sup>9</sup> Judge advocate v. Sombat Boonngam-anong, Pending case no. 24A/2014, Court decision of 23 January 2015; Judge advocate v. Worrachet Pakeerat, Pending case no. 32A/2014, Court decision of 26 January 2015; Judge advocate v. Chaturon Chaisaeng, Pending case no. 31A/2014, Court decision of 13 February 2015; and Judge advocate v. Jittra Kotchadet, Pending case no. 28A/2014, Court decision of 6 March 2015.

<sup>10</sup> Court rejects challenge against NCPO order, Bangkokpost, Bangkok, <http://www.bangkokpost.com/news/politics/642384/court-rejects-challenge-against-ncpo-order>.

<sup>11</sup> One year living under HNCPO Order No. 3/2015: The exercise of special powers in ordinary situations, TLHR, <https://tlhr2014.wordpress.com/2016/04/22/one-year-head-of-ncpo-order-3-2015/>.

10. Another example of the inability of the courts to review HNCPO orders concerns those orders relating to the establishment of Special Economic Zones ('SEZ') throughout Thailand. HNCPO Orders No. 17/2558, 3/2559 and 74/2559 authorize the acquisition of land for SEZs while at the same time allowing for the bypassing of the usual checks and balances required under Thai law for such projects. As communities affected by this process are unable to have actions taken pursuant to these HNCPO Orders judicially reviewed, they are forced to bring cases before the courts using other strategic causes of action such as challenging the issuance of land title deeds by the Ministry of Finance following the acquisition of the land under these HNCPO Orders.<sup>12</sup>
11. Finally, a provision contained in the draft Constitution, which was endorsed by a public referendum held on 7 August 2016, reaffirms the constitutionality and legality of all NCPO orders, announcements and acts both past and future. Article 279 of the draft Constitution provides that all NCPO orders, announcements and acts including those issued under Article 44 "...already in force prior to the date of promulgation of this Constitution or will come into force... irrespective of their constitutional, legislative, executive or judicial force, shall be considered constitutional and lawful and shall continue to be in force under this Constitution."<sup>13</sup> Article 279 of the draft Constitution also holds that NCPO orders and announcements can only be repealed or amended by the passage of an Act.

*No accountability – impunity*

12. The Head, members and agents of the NCPO are immune from legal accountability for their actions. Article 48 of the interim Constitution states that all acts of the NCPO in relation to the *coup*, including any acts by people connected to the NCPO, even if the acts are illegal, "...shall be exempted from being offenders and shall be exempted from all accountabilities."<sup>14</sup>
13. Thai courts have upheld the NCPO's lack of accountability under Article 48. On the one-year anniversary of the *coup*, a group of activists named Resistant Citizen lodged a lawsuit against Prime Minister General Prayuth Chan-O-cha and five others, accusing them of treason for instigating the *coup*. On 29 May 2015, the Court of first instance dismissed the suit, holding that Article 48 of the interim Constitution exempts the NCPO from accountability under the law.<sup>15</sup> On 18 February 2016, the Appeal Court upheld the decision. On 23 May 2016, the group appealed and the case is currently before the Supreme Court.<sup>16</sup>

*Right to an effective remedy*

14. The changes to the legal landscape following the *coup* have prevented alleged victims of human rights violations from seeking remedies, including reparation, contrary to Article 2 of the Covenant. For example, the revocation of the 2007 Constitution, which, under Article 32, guaranteed remedies for "torture, brutal act, or punishment by cruel or inhuman means" has resulted in the denial of an effective remedy to Mr. Hasan Useng, who claimed he was tortured by security

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<sup>12</sup> Mae Sot villagers take junta to court to challenge SEZ, Prachatai, Bangkok, <http://www.prachatai3.info/english/node/6686>.

<sup>13</sup> Unofficial English translation, please see: <https://www.icj.org/thailand-english-translation-of-draft-constitution/>.

<sup>14</sup> See supra note 8.

<sup>15</sup> Anti-coup group wants treason suit against PM, The Nation, Bangkok, <http://www.nationmultimedia.com/politics/Anti-coup-group-wants-treason-suit-against-PM-30265531.html>.

<sup>16</sup> The Supreme Court accepts dika appeal of the Anti-Coup Group, Khaosod, Bangkok, [www.khaosod.co.th/view\\_newsonline.php?newsid=1464019623](http://www.khaosod.co.th/view_newsonline.php?newsid=1464019623) (TH).

forces in the country's restive 'deep South' in April 2014.<sup>17</sup> On 7 October 2014, the Pattani Provincial Court ruled that Mr. Hasan Useng was not entitled to judicial remedies or reparation as his claim had been made under Article 32 of the 2007 Constitution, which had been revoked at the time of the judgment.<sup>18</sup> In an *amicus curiae* submission filed in the proceedings, the ICJ submitted that international standards dictate that Thailand may not rely on provisions of its internal law to justify a failure to comply with its obligations under international law, such as the Covenant and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT').<sup>19</sup>

#### Repressive NCPO Orders and Announcements

15. Since 22 May 2014, the NCPO has issued at least 202 general orders and 125 announcements.<sup>20</sup> Many of these orders and announcements are inconsistent with Thailand's obligations under the Covenant, including: imposing a nationwide curfew<sup>21</sup> (lifted on 13 June 2014); banning political gatherings of five or more people;<sup>22</sup> limiting media freedom;<sup>23</sup> summoning individuals to military camps and penalizing those who fail or refuse to report themselves;<sup>24</sup> ordering the prosecution of civilians in military courts for certain offences, including for violation of NCPO orders and announcements, a sedition-like offence and the broad and vaguely worded crime of *lèse majesté*. While an order on 12 September 2016 ended the practice of prosecuting civilians in military courts - only for crimes committed after the date of the order - it did not repeal the underlying announcements extending the jurisdiction of military courts over civilians.<sup>25</sup>
16. Regarding HNCPO orders issued under Article 44, the number of orders has increased steadily since the interim Constitution was promulgated. Since 2014, the Head of the NCPO has issued at least 130 orders (one in 2014, 48 in 2015; 78 in 2016, and three to date in 2017).<sup>26</sup>

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<sup>17</sup> Thailand's southernmost provinces are predominantly populated by ethnically Malay Muslims; the simmering resistance against incorporation into Thailand erupted into an armed insurgency in 2004, killing between 4,000-6,000 people since then. For more information, please see: ICJ's report on Thailand's Internal Security Act: risking the rule of law?, ICJ, <http://www.icj.org/thailands-internal-security-act-risking-the-rule-of-law>.

<sup>18</sup> Thailand: court ruling raises questions about protection against torture, ICJ, <http://www.icj.org/thailand-torture-victim-denied-redress-government-should-comply-with-international-rights-obligations/>.

<sup>19</sup> Amicus Curiae Brief in the case of the petitioner Ms. Rorheemah Useng (Black Case Number Tor Por 1/2557), ICJ, <http://icj.wengine.netdna-cdn.com/wp-content/uploads/2014/10/Thailand-Amicus-Hasan-Useng-Advocacy-legal-summission-2014-ENG.pdf>.

<sup>20</sup> National Council for Peace and Order's announcements and orders, please see: <http://library2.parliament.go.th/giventake/ncpo.html>.

<sup>21</sup> NCPO Announcement No.3/2557.

<sup>22</sup> NCPO Announcement No.7/2557 and HNCPO Order No. 3/2558.

<sup>23</sup> NCPO Announcement No.15/2557.

<sup>24</sup> During 22 May and July 2014, the NCPO issued 37 orders (NCPO Order No. 1, 2, 3, 5, 6, 12, 13, 14, 15, 16, 18, 19, 23, 25, 29, 30, 31, 34, 35, 36, 42, 43, 44, 46, 48, 49, 50, 52, 53, 57, 58, 61, 63, 65, 68, 82 and 86/2557) to officially summon 472 individuals to report themselves to the military. NCPO Announcement No. 41/2557 stipulating that failure to report following a summons by the junta is a crime. Violations are punishable by a maximum prison sentence of two years, a maximum fine of 40,000 baht, or both, or the seizure and freezing of financial or other assets. NCPO Announcement No. 39/2557, those who reported themselves had to sign statements agreeing to the conditions that they would not engage in any political activities and that they would not leave the country without the permission of the NCPO. The NCPO further stipulated that any violation of these conditions would constitute a crime that fell within the jurisdiction of the military court.

<sup>25</sup> NCPO Announcements No. 37/2557, 38/2557, 50/2557 and HNCPO Order No. 55/2559.

<sup>26</sup> See supra note 20; Thailand: ICJ alarmed at increasing use of arbitrary powers under Article 44, ICJ, <https://www.icj.org/thailand-icj-alarmed-at-increasing-use-of-arbitrary->

17. Orders issued under Article 44 include some which directly restrict the rights of people in Thailand while others concern bureaucratic processes. Those of most concern include providing for the acquisition of land for the establishment of SEZs by bypassing the usual environmental and social checks and balances provided for in domestic legislation;<sup>27</sup> granting military officers sweeping powers of investigation, arrest and detention in unofficial places of detention;<sup>28</sup> and prohibiting the gathering of five or more persons for political purposes.<sup>29</sup>

Martial Law and its replacements: HNCPO Orders No. 3/2558 and. 13/2559

*HNCPO Order No. 3/2558*

18. On 20 May 2014, two days before the *coup*, the military imposed nationwide Martial Law.<sup>30</sup> Martial Law provides the military with superior powers over civil authorities, including the power to arrest and administratively detain individuals for up to seven days without charge without requiring that they be brought before the courts.
19. On 1 April 2015, nearly a year after imposing Martial Law nationwide, the NCPO lifted Martial Law from most provinces in Thailand. However, Martial Law remains in place in those areas where it was already imposed prior to 20 May 2014.<sup>31</sup>
20. After lifting Martial Law, the Head of the NCPO invoked Article 44 of the interim Constitution to issue HNCPO Order No. 3/2558, later augmented by HNCPO Order No. 5/2558, which gives appointed "peace and order maintenance officers" many of the same powers the military has under Martial Law.<sup>32</sup> HNCPO Order No. 3/2558 also gives the military even broader powers than it has under Martial Law, including greater powers of investigation. Any actions taken under HNCPO Order No. 3/2558 are not subject to review and claims for compensation brought against peace and order maintenance officers who have acted in "good faith" are prohibited.
21. On 2 April 2015, the UN High Commissioner for Human Rights responded to the replacement of Martial Law by these HNCPO Orders by saying, "Normally I would warmly welcome the lifting of Martial Law – and indeed strongly advocated for it to be lifted in Thailand ... But I am alarmed at the decision to replace Martial Law with something even more draconian, which bestows unlimited powers on the current Prime Minister without any judicial oversight at all."<sup>33</sup>

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powers-under-Article-44/.

<sup>27</sup> For example, HNCPO Order No. 17/2558.

<sup>28</sup> HNCPO Order No. 3/2558, 5/2558, and 13/2559.

<sup>29</sup> HNCPO Order No. 3/2558.

<sup>30</sup> Thailand: authorities must revoke Martial Law, restore media freedom, ICJ, <http://www.icj.org/thailand-authorities-must-revoke-martial-law-restore-media-freedom/>.

<sup>31</sup> Martial law was already in force in 31 provinces and 185 districts of Thailand's 77 provinces, including most of the provinces along Thailand's border with Myanmar, Lao PDR, Cambodia, and Malaysia. The southern border provinces of Pattani, Yala, and Narathiwat, have a well-documented history of human rights violations.

<sup>32</sup> Unofficial translation of Thai junta's order, replacing Martial Law with Section 44 of interim charter, Prachatai, Bangkok, <http://www.prachatai.com/english/node/4933>; Thailand: Lift Martial Law and return the country to civilian authority, ICJ, <http://www.icj.org/thailand-lift-martial-law-and-return-the-country-to-civilian-authority/>.

<sup>33</sup> UN Human Rights Chief alarmed by Thai Government's adoption of potentially unlimited and "draconian" powers, OHCHR, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15793>.

22. On 29 March 2016, the Head of the NCPO issued HNCPO Order No. 13/2559 which provides appointed "Prevention and Suppression Officers" and their assistants, drawn from military officials, with wide-ranging powers to prevent and suppress 27 categories of crimes including against public peace, liberty and reputation, immigration, human trafficking, narcotics, and weapons. Prevention and Suppression Officers are granted extensive police powers, including power to arrest, detain and search suspects (without a warrant) and hold suspects in places not officially recognized as places of detention for up to seven days. They are also granted a form of immunity from prosecution when acting under the Order and their actions are exempted from judicial review. Similar to HNCPO Order No. 3/2558, claims for compensation brought against prevention and suppression officers who have acted in "good faith" are prohibited.<sup>34</sup>

### III. States of emergency

23. On 20 May 2014, two days before the *coup*, the military imposed nationwide Martial Law. On 8 July 2014, Thailand stated that it would derogate under Article 4(1) of the Covenant in respect of: Article 12(1) (liberty of movement); Article 14(5) (right to have a conviction and sentence reviewed by a higher tribunal); Article 19 (freedom of opinion and expression); and Article 21 (freedom of peaceful assembly).<sup>35</sup>
24. The derogation from the foregoing provisions of the Covenant remains in place today. While Thailand, at paragraph 43 of its 15 November 2016 Replies to the Committee's List of Issues ('Thailand's Replies'), claims that "As Thailand is still in the transitional period, the derogation remains necessary to ensure public order as well as to prevent any actions that might create more divisiveness and polarization," concern has been expressed about whether the circumstances in Thailand today in fact entail "a public emergency which threatens the life of the nation" as required under Article 4 of the Covenant.<sup>36</sup> In any event, the specific measures the Thai Government has adopted have not been proportionate and most of the justifications it has invoked are not recognized by the Covenant as valid grounds for restricting human rights.
25. According to a report of the National Human Rights Commission of Thailand ('NHRCT') dated 24 November 2015, the NCPO had claimed that nationwide Martial Law was a necessary measure to suppress and control political unrest in Thailand; and that its implementation was restricted only to "convicts" and "dissenting individuals" who were summoned for "attitude adjustment" - to talk - and were later released. Notwithstanding these claims, in its report, the

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<sup>34</sup> See supra note 6.

<sup>35</sup> Full text of Thailand's 8 July 2014 derogation, please see: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4\(en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4(en#EndDec). It refers to derogating "specifically in Article 12 (1), by the announcement of a curfew which was lifted on 13 June 2014; Article 14 (5), only where a jurisdiction has been conferred to the Military Court over Sections 107-112 of the Penal Code and the offences against the internal security of the Kingdom; Article 19, by the prohibition of broadcasting or publishing certain content, particularly those inciting conflict and alienation in the society, false or provoking messages, and Article 21, by the limitation of political gathering. These restrictions are under constant review and are progressively lifted."

<sup>36</sup> Human Rights Committee, General Comment 29, States of Emergency (Article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 2, 4. The Committee has held that, "measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature." And such measures are limited "to the extent strictly required by the exigencies of the situation" and must reflect "the principle of proportionality".

NHRCT concluded that the post-*coup* situation did not constitute a public emergency threatening the life of the nation. As a result, the NHRCT concluded that the enforcement of Martial Law and/or any other law that limits people's human rights are measures that are inconsistent with Thailand's obligations under the Covenant.<sup>37</sup>

#### **IV. Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment**

26. Allegations of torture and other ill-treatment, enforced disappearance and deaths in custody - implicating the police and/or military - are frequently not investigated in a prompt, impartial and effective manner by the Thai authorities. In those cases where compensation is paid to victims, the alleged perpetrators are usually not brought to justice.

##### Draft law on torture and enforced disappearance

27. Thailand is in the process of drafting a Bill named the Draft Prevention and Suppression of Torture and Enforced Disappearance Act, which aims to, *inter alia*, criminalize torture and enforced disappearance. On 27 December 2016 the Bill was submitted to the National Legislative Assembly ('NLA') for its consideration, but has yet to be enacted into law. It is not yet known whether the final draft of this Bill will be consistent with Thailand's international human rights obligations, including under the Covenant, the CAT, and the International Convention for the Protection of All Persons from Enforced Disappearance ('ICPPED'), which Thailand has signed but not yet ratified.

28. However, a draft of the Bill seen by the ICJ and TLHR in December 2016 gives rise to a number of concerns. It omits to criminalize cruel inhuman or degrading treatment;<sup>38</sup> it fails to state explicitly that a statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against persons accused of torture as evidence that the statement was made; and it fails to provide for the possibility of convicting someone for the crime of enforced disappearance in instances where the enforced disappearance commenced prior to the passage of the Act, therefore failing to take into account the continuing nature of the crime of enforced disappearance.<sup>39</sup>

29. Further, under the legal framework put in place since the *coup*, it is likely that even if the Bill is passed, alleged perpetrators who are members or agents of the NCPO may enjoy immunity from prosecution under the interim Constitution and other NCPO orders and announcements, as set out above.

##### Torture, other ill-treatment and custodial deaths in disputed circumstances

30. In 2014, the Committee Against Torture noted serious concerns "about the continued allegations of widespread torture and ill-treatment of detainees" and recommended Thailand "take immediate and effective measures to investigate all acts of torture and ill-treatment and to prosecute and punish those responsible."<sup>40</sup>

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<sup>37</sup> For the full report, please see: <https://tlhr2014.files.wordpress.com/2016/06/nhrc-report.pdf>.

<sup>38</sup> Committee Against Torture, General Comment 2: Implementation of article 2 by state parties, UN Doc CAT/C/GC/2, 24 Jan 2008, para. 6. The Committee held that that Article 3-15 of CAT was "likewise obligatory as applied to both torture and ill-treatment."

<sup>39</sup> Working Group on Enforced or Involuntary Disappearances General Comment on Enforced Disappearance as a Continuous Crime, A/HRC/16/48, <http://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf>.

<sup>40</sup> Concluding observations of the Committee against Torture on the initial report of Thailand,



*Allegations of torture and other ill-treatment after the coup*

31. TLHR has documented at least 18 allegations of torture and other ill-treatment of individuals detained pursuant to Martial Law after the *coup*.<sup>41</sup> In September 2014, TLHR produced a report entitled “The Human Rights Situation 100 Days after the Coup d’Etat”, which included 14 instances of alleged torture against individuals detained pursuant to Martial Law, and stated that the allegations “must be investigated promptly, independently, and impartially.”<sup>42</sup> It also noted that alleged victims of torture are afraid to pursue their complaints because they are being prosecuted for criminal offences and many are still imprisoned and therefore afraid of reprisals. The authorities replied to TLHR that the 14 complaints had been sent to the NHRCT.
32. On 18 May 2016, TLHR received a NHRCT report, dated 24 November 2015, which concluded that there was not enough medical and forensic evidence to indicate that acts of torture have occurred. However, the NHRCT noted its investigation into the allegations of torture had been hampered due to obstacles in accessing evidence in a timely fashion and in light of the fact that it depended on the cooperation of the relevant authorities. The NHRCT also noted that the power to detain individuals for up to seven days under Martial Law without disclosing the place of detention created a risk that detainees could be tortured.<sup>43</sup>

*Failure to promptly, effectively and impartially investigate allegations of torture*

33. Throughout 2016, several other NGOs released reports on allegations of torture and ill-treatment, calling on Thailand to conduct prompt, impartial and effective investigations.<sup>44</sup> In some cases, allegations of torture or other ill-treatment do not appear to have been investigated at all, contrary to Thailand’s obligations under the CAT and the Covenant.<sup>45</sup> For instance, Ms. Kritsuda Khunasen, a political activist, was taken from her house on the evening of 28 May 2014 and was effectively the victim of enforced disappearance before being released on 24 June 2014, 29 days after her “disappearance”. She alleged that she had been physically and sexually

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CAT/C/THA/CO/1, para. 10.

<sup>41</sup> Human Rights One Year After the 2014 Coup: A Judicial Process in Camouflage Under the National Council for Peace and Order, TLHR, [https://tlhr2014.files.wordpress.com/2015/06/20150604\\_tlhr-report-human-rights-one-year-after-the-2014-coup.pdf](https://tlhr2014.files.wordpress.com/2015/06/20150604_tlhr-report-human-rights-one-year-after-the-2014-coup.pdf).

<sup>42</sup> “The Human Rights Situation 100 Days after the Coup d’Etat, TLHR, <https://tlhr2014.files.wordpress.com/2015/01/all-en-tlhr-100-days-human-rights-report.pdf>

<sup>43</sup> For the full report, please see: <https://tlhr2014.files.wordpress.com/2016/06/nhrct-report.pdf>.

<sup>44</sup> For example: Amnesty International’s report on allegations of torture and other ill-treatment by the Thai military and police: *Make Him Speak by Tomorrow: Torture and other ill-treatment in Thailand*. The report documents 74 cases of torture and other forms of abuse by the Thai military and police based on interviews with victims in 2014 and 2015 as well as information gathered from lawyers, relatives, court documents and medical records. Please see: <https://www.amnesty.org/en/documents/asa39/4747/2016/en/>.

See also, Cross Cultural Foundation and the Duay Jai Group’s report on allegations of torture in Thailand’s deep South between 2004 and 2015. The report documents 54 allegations of torture and ill-treatment in the Deep South of Thailand between 2004 and 2015, with 32 incidents allegedly taking place between 2014 and 2015. Please see: [http://alrc.asia/Article2/wp-content/uploads/2016/08/A2\\_V15-N2-\\_final.pdf](http://alrc.asia/Article2/wp-content/uploads/2016/08/A2_V15-N2-_final.pdf).

See also, the Muslim Attorney Center’s report on allegations of torture and ill-treatment of deep South insurgent suspects arrested and detained under special security laws. The report records 33 allegations of torture and ill-treatment made by former detainees and their families in the region. Please see: <http://th.macmuslim.com/?p=1025>.

<sup>45</sup> Submission to Committee Against Torture, ICJ, <http://www.icj.org/icj-submission-on-thailand-to-the-un-committee-against-torture/>.

assaulted. Thus far, there has been no substantive response from the Thai authorities about her case, and there does not appear to have been a prompt, independent, impartial and effective investigation as required by Articles 2(3), 7 and 9 of the Covenant.<sup>46</sup> Another example concerns the case of four accused allegedly involved in a hand-grenade attack on the Bangkok Criminal Court.<sup>47</sup> In May 2015, the Metropolitan Police Bureau responded to Mr. Sansern Sriounreun, one of the accused, who had made an allegation of torture, stating that the bruises on his body were likely to have been caused by falling on or hitting a blunt object. In light of this, the Metropolitan Police Bureau concluded that torture could not be established.<sup>48</sup> In July 2015, Mr. Sansern Sriounreun challenged the police's finding and alleged that he was subjected to torture and ill-treatment by military officers who arrested and interrogated him during his detention under Martial Law in March 2015, and requested a re-investigation.<sup>49</sup> There does not appear to have been any progress with the investigation into these allegations.

*Compensation awarded but no-one brought to justice*

34. In a number of cases, alleged victims of torture or the families of those who died as a result of torture have been compensated, but the perpetrators have not been brought to justice. For example, Imam Yapa Kaseng was allegedly tortured and killed while in the custody of the military in March 2008.<sup>50</sup> Following a mediation facilitated by the civil court, the family received 5.2 million Thai Baht in compensation. In August 2015, the National Anti-Corruption Committee ('NACC'), which opened an investigation in 2008, indicated that there were grounds for one officer to face a charge of serious disciplinary misconduct and malfeasance but that the evidence was not sufficient to support charges against the other four officers implicated.<sup>51</sup> The NACC sent the finding to a superior officer to consider disciplinary action and to the Attorney General to consider whether to prosecute the alleged perpetrator. To date, no prosecution has commenced and no perpetrators have been brought to justice. In another case, the Administrative Court ordered the Prime Minister's Office to pay the family of Mr. Ashari Samaae, 500,000 Thai Baht after he was reportedly tortured and killed while in the custody of the military in July 2007. However, to date, no military officer or anybody else has been prosecuted in connection with his death.<sup>52</sup> Further, on 19 October 2016, the Supreme Administrative Court ordered the Royal Thai Army and the Defence Ministry to compensate two plaintiffs: Mr. Ismael Tae and Mr. Amisi Manak,

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<sup>46</sup> Thailand: allegations of torture against activist Kritsuda Khunasen require immediate investigation, ICJ, <http://www.icj.org/thailand-allegations-of-torture-against-activist-kritsudakhunasen-require-immediate-investigation/>.

<sup>47</sup> Police told of bomb plots by red shirts, The Nation, Bangkok, <http://www.nationmultimedia.com/politics/Police-told-of-bomb-plots-by-red-shirts-30255607.html>.

<sup>48</sup> Claims of torture over court attack materialize, The Nation, Bangkok, <http://www.nationmultimedia.com/politics/Claims-of-torture-over-court-attack-materialise-30256375.html>; Police condemned for 'unlawful' dismissal of torture allegation by red-shirt bomb suspect, Prachatai, Bangkok, <http://www.prachatai.com/english/node/5233>; Court bombing suspect asks police to reinvestigate torture allegation, Prachatai, Bangkok, <http://prachatai.org/english/node/5332>.

<sup>49</sup> Court bombing suspect asks police to reinvestigate torture allegation, Prachatai, Bangkok, <http://prachatai.org/english/node/5332>.

<sup>50</sup> Thailand: Inquest Blames Soldiers for Imam's Death, HRW, <https://www.hrw.org/news/2009/01/07/thailand-inquest-blames-soldiers-imams-death>.

<sup>51</sup> Opinion of NACC, please see: [http://www.nacc.go.th/cul\\_detail.php?id=jIACSuayrsUHMO29vJiG](http://www.nacc.go.th/cul_detail.php?id=jIACSuayrsUHMO29vJiG).

<sup>52</sup> Compensation but no prosecution over death of Deep South torture victim, Prachatai, Bangkok, [http://prachatai.org/english/node/5408?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+prachataienglish+%28Prachatai+in+English%29](http://prachatai.org/english/node/5408?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+prachataienglish+%28Prachatai+in+English%29).

after it found they had been tortured and illegally detained for nine days - exceeding the limit of seven days permitted under Martial Law. In 2008, the pair were arrested pursuant to Martial Law and allegedly tortured in order to extract a forced confession in relation to a national security case. To date, no perpetrators have been brought to justice.<sup>53</sup>

35. Another challenge is that, when the alleged perpetrator is a member of the armed forces, only a military prosecutor may bring charges before a military court. This reduces the likelihood that victims of torture or their families to obtain justice.

#### Enforced disappearance

36. Eighty-two cases of enforced or involuntary disappearance in Thailand were reported to the Working Group on Enforced or Involuntary Disappearances between 1980 and 2016.<sup>54</sup> The following cases are emblematic of the issue of enforced disappearance in the country.

##### *Mr. Somchai Neelapaijit*

37. Eyewitnesses recount seeing Mr. Somchai Neelapaijit, a prominent lawyer and human rights defender working in Thailand's deep South, being pulled from his car in central Bangkok and taken away by five men on 12 March 2004. He has not been seen since.<sup>55</sup> In April 2004, the Criminal Court in Bangkok issued arrest warrants for five police officers allegedly involved in his abduction. Eventually, in January 2006, four police officers were acquitted and one was convicted of the minor crime of coercion, but, in March 2011, the Court of Appeal in Bangkok overturned his conviction.<sup>56</sup> On 29 December 2015, the Supreme Court of Thailand confirmed the Appeal Court acquittal of five policemen accused of involvement in the disappearance of Mr. Somchai Neelapaijit. In October 2016, after 11 years and three months of investigation, the Department of Special Investigations ('DSI') declared the case closed, saying no culprits had been found.<sup>57</sup>

##### *Mr. Pholachi "Billy" Rakchongcharoen*

38. Another example of a suspected enforced disappearance is the case of Mr. Pholachi "Billy" Rakchongcharoen, a Karen minority human rights defender, who was last seen on 17 April 2014 in the custody of Kaeng Krachan National Park Officials. Park officials admitted that they had detained Billy for "illegal possession of wild honey" but claimed that they had released him the same day.<sup>58</sup> At the time of his "disappearance", he had been working with Karen

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<sup>53</sup> Supreme Administrative Court Ruled that Students from Yala are eligible for compensation, Prachatai, Bangkok, <http://prachatai.com/journal/2016/10/68437>.

<sup>54</sup> HRC, Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/33/51, Annex II.

<sup>55</sup> Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand, ICJ, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>.

<sup>56</sup> Thailand: effective investigation of enforced disappearance of Somchai Neelapaijit needed after Supreme Court ruling, ICJ, <http://www.icj.org/thailand-effective-investigation-of-enforced-disappearance-of-somchai-neelapaijit-needed-after-supreme-court-ruling/>.

<sup>57</sup> Somchai Neelapaijit case closed, says DSI, Bangkok Post, <http://m.bangkokpost.com/news/crime/1109580/somchai-neelapaijit-case-closed-says-dsi>.

<sup>58</sup> Thailand: "Disappearance" of Billy demands special investigation, ICJ, <http://www.icj.org/thailand-disappearance-of-billy-demands-special-investigation/>; Thailand: enforced disappearances, ICJ, <http://www.icj.org/thailand-enforced-disappearances/>; Thailand: strengthen efforts to solve the apparent enforced disappearance of "Billy", ICJ. <http://www.icj.org/thailand-strengthen-efforts-to-solve-the-apparent->

villagers and activists on legal proceedings concerning the alleged burning of villagers' homes and property in the National Park in 2010 and 2011. On 17 July 2014, following a six-day *habeas corpus* inquiry, the Court of First Instance, concluded it could not be established that Billy was still in detention when he disappeared. Subsequent appeals of this decision to the Appeal and Supreme Courts failed to shed any light on Billy's fate or whereabouts.<sup>59</sup> On 6 August 2015, Billy's wife requested the DSI to open a special investigation into the case due to the lack of progress in the police investigation.<sup>60</sup> In January 2017, the DSI notified Billy's wife it had decided not to open a special investigation into the case.<sup>61</sup> On 8 February 2017, the DSI reportedly advised the NHRCT that there were three reasons for its reason not to open a special investigation into the case: first, investigative efforts had remained inconclusive and had affected the agency's performance; second, Billy and his wife were not legally married; and third, the agency would be able to proceed with the investigation if Billy's body were to be found.<sup>62</sup>

39. The ICJ and TLHR are concerned that the DSI has closed the investigation into Mr. Somchai Neelapaijit's enforced disappearance and refused to investigate the suspected enforced disappearance of "Billy," shortly before the Draft Prevention and Suppression of Torture and Enforced Disappearance Act is reported to be passed. The current draft of the Bill states that the DSI shall have authority to investigate enforced disappearance, and given the continuous nature of the crime, the DSI should accept the case of "Billy" - and both investigations should remain open until such time as their fate or whereabouts have been established.

#### **V. Right to liberty and security of the person, treatment of persons deprived of their liberty, rights to a fair trial and independence of judiciary**

40. There are numerous examples of violations of the rights to: liberty and security of the person; to be free from arbitrary detention; and to a fair trial, including to an independent tribunal.

#### Arbitrary Arrest and Detention under Special Security Laws and HNCPO Orders

41. Martial Law (which continues to apply in parts of Thailand), and HNCPO Orders No. 3/2558 and 13/2559 endow appointed officers with extensive police powers, including powers to arrest, detain and search suspects (without warrants) and to hold them in places not officially recognized as places of detention for up to seven days. Military officers have summoned individuals to report or meet with local authorities on military bases, invoking HNCPO Orders No. 3/2558 and 13/2559. According to information compiled by TLHR, between the *coup* and 30 April 2016, military officials have summoned at least 1,006 people to report themselves or attend "attitude adjustment" sessions on military bases. At least 579 people have been arrested under Martial Law or HNCPO Order No. 3/2558.<sup>63</sup> The total number nationwide is unknown, as the Government has not released official figures. In some cases, military officers detained the summoned persons for up to seven days. For example, Mr. Pravit

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enforced-disappearance-of-billy/.

<sup>59</sup> Supreme Court Case No.7237/2558, 9 July 2015, Pinnapa Prueksapan, petitioner.

<sup>60</sup> Thailand: launch special investigation into enforced disappearance of "Billy", ICJ, <http://www.icj.org/thailand-launch-special-investigation-into-enforced-disappearance-of-billy/>.

<sup>61</sup> DSI drops probe into missing Karen activist, The Nation, Bangkok, <http://www.nationmultimedia.com/news/national/30305405>.

<sup>62</sup> NHRC pursues fight for 'Billy' with DSI, Bangkok Post, Bangkok, <http://m.bangkokpost.com/news/general/1195813/nhrc-pursues-fight-for-billy-with-dsi>.

<sup>63</sup> The Force of the Gun Camouflaged as Law and a Justice System, TLHR, <http://www.tlhr2014.com/th/?p=1443>.

Rojanaphruk, formerly a reporter for national English language newspaper *The Nation*, and Mr. Thanapol Eawsakul, the managing editor of *Fa Diew Kan Press*, were both summoned to report to the military after they expressed criticism of the NCPO.<sup>64</sup>

*Rights of detainees and conditions of detention*

42. TLHR lawyers have experienced difficulties in obtaining access to clients who were arrested and detained without charge for up to seven days by military personnel under HNCPO Orders No. 3/2558 and 13/2559. During the seven-day detention period, relatives and lawyers are unable to contact or access the detainees held in military custody. Cases in which TLHR lawyers have experienced difficulties in obtaining access to clients include: the detention of Mr. Thanakorn Siripaiboon, who was subsequently charged with violation of Article 112 of the Criminal Code for posting a picture on Facebook that “defamed” the King’s dog; the detention of Mr. Sarawut Bamrungkittikhun, the administrator of the “*Peod Praden*” (Open Issues) Facebook page; and the detention of Mr. Watana Muangsook, a Pheu Thai Party politician, among others.
43. Pursuant to HNCPO Order No. 13/2559, military officials have the power to take action against individuals they view as “influential figures” whose behavior and actions are “deemed to be criminal”, “pose a dangerous threat to peace and order”, or “undermine the social and economic system of the country”. The broad and vague grounds of arrest, summons and detention are open to misuse or abuse of power by the authorities. For instance, some individuals who are leaders within local communities opposed to development and industrial projects have been arrested and detained under this Order, such as Mr. Thaweesak Inkawang, a leader opposed to the *Chiang Rak* waste power plant in Pathumthani Province, and Mr. Lamom Boonyong, who is the president of *Pak Nam Ban Rao* Group in Rayong Province.<sup>65</sup>

*Right to challenge the legality of detention before a court*

44. Article 9(4) of the Covenant enshrines the fundamental principle of *habeas corpus* which “applies to all detention by official action or pursuant to official authorization, including [...] military detention, security detention, counter-terrorism detention [...] and wholly groundless arrests”.<sup>66</sup>
45. Although Section 90 of the Thai Criminal Procedure Code makes provision to challenge the legality of detention before a court, Thai courts have dismissed *habeas corpus* writs challenging detention under HNCPO orders. A case in point is the detention of the eight administrators of the “*We Love Gen Prayuth*” Facebook page, who, on 28 April 2016, were charged with sedition for their alleged involvement in “mocking” General Prayuth Chan-o-cha. They were taken from their homes and held in custody at a military camp.<sup>67</sup> They were

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<sup>64</sup> Journalists summoned and arrested as Thai army gets tough on media, Reporters Without Border, <https://rsf.org/en/news/journalists-summoned-and-arrested-thai-army-gets-tough-media>.

<sup>65</sup> For an example of the use of HNCPO Order No. 13/2559 in which the soldiers summoned a leader opposed to the Chiang Rak waste power plant and claimed that he was an influential person, please see: Statement on the summoning of Thaweesak, TLHR, <https://tlhr2014.wordpress.com/2016/03/30/ncpo-summoned-taweesak-junk-power-plant/> (TH); Statement on the detention of the president of Pak Nam Ban Rao Group for attitude adjustment, TLHR, [https://tlhr2014.wordpress.com/2016/03/29/lamom\\_detention/](https://tlhr2014.wordpress.com/2016/03/29/lamom_detention/) (TH).

<sup>66</sup> General Comment 35, CCPR/C/GC/35, para. 40.

<sup>67</sup> Recap of the case against the ‘Facebook 8’ on 29 April: Military Court denied bail requests of the Facebook page admin suspects, TLHR,

allegedly arrested by military personnel without warrants. Furthermore, it was reported that the officials neither stated the reasons for the arrest nor informed them of any charges against them. Their families and appointed attorneys filed *habeas corpus* writs with the Bangkok Criminal Court invoking Section 90 of the Criminal Code and sought their release from military custody. The Court refused to conduct a hearing, and on 27 April 2016 ruled that the custody was lawful under the invocation of HNCPO Order No. 3/2558 as it had not lasted more than seven days.<sup>68</sup>

#### *Detention of civilians in military facilities*

46. The Committee has held that “[d]etainees should be held only in facilities officially acknowledged as places of detention”,<sup>69</sup> and that “any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power”.<sup>70</sup> The Committee has repeatedly stated that persons detained for longer than 48 hours before being brought before a judge have been arbitrarily detained and that any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.<sup>71</sup>
47. One of the key detention and interrogation facilities used by the military government is the Nakhon Chaisri Remand Facility situated inside the 11th Army Circle military base in Bangkok. On 8 September 2015, the Thai Ministry of Justice announced its creation “for the sake of maintenance of security and to accommodate the deprivation of liberty and the treatment of suspects in cases concerning national security and other related cases, whereas the suspects give rise to special circumstances and they cannot be held in custody together with other suspects.”<sup>72</sup> According to information provided by the Bangkok Remand Prison to TLHR in July 2016, between 14 September 2015 and 8 March 2016, a total of 47 non-military detainees have been under the control of six correctional officers and 80 military officers appointed as special correctional officers.<sup>73</sup> Since the establishment of the Nakhon Chaisri Remand Facility, at least two detainees have died while in custody there.<sup>74</sup> The bodies of both men appear to have been cremated before a full investigation into the cause of death that meets international standards could take place. Further, lawyers acting for detainees have complained of violations of their clients’ fair trial rights including that the lawyers were only permitted to meet with their clients in the presence of military officers.<sup>75</sup> Additionally, one detainee, an accused in the 17 August 2015 Erawan Shrine bombing case in Bangkok, Mr. Adem Karadag, withdrew his alleged confession, and claimed he had been tortured at the Facility.<sup>76</sup> On 23 August 2016, the Bangkok Military Court

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<https://tlhr2014.wordpress.com/2016/05/04/8facebook-recap-29april/>.

<sup>68</sup> Eleven “Court” Contributions under the NCPO’s Regime in 2016, TLHR, <http://www.tlhr2014.com/th/?p=3168>.

<sup>69</sup> The Committee, General Comment 35, CCPR/C/GC/35, para. 58.

<sup>70</sup> Ibid, para. 32.

<sup>71</sup> Ibid, para. 33.

<sup>72</sup> Ministry of Justice Order No. 314/2558 re the Temporary Detention Kwang Nakhon Chaisri. Government Gazette, <http://www.ratchakitcha.soc.go.th/DATA/PDF/2558/E/215/7.PDF>.

<sup>73</sup> A Year of Civilian Detention in a Prison on Military Base: What Do We Know about the Detainees There?, TLHR, <http://www.tlhr2014.com/th/?p=2730>.

<sup>74</sup> Open letter to the Permanent Mission of Thailand, ICJ&HRW, <http://www.icj.org/thailand-human-rights-watch-and-the-icj-express-concerns-over-detentions/>.

<sup>75</sup> See supra note 75.

<sup>76</sup> Shrine bombing suspect recants confession, claims torture, Bangkok Post, Bangkok, <http://www.bangkokpost.com/news/crime/864820/shrine-bombing-suspect-recants-confessionclaims-torture>.

rejected his allegation of torture for lack of evidence.<sup>77</sup> In an open letter to the Permanent Mission of Thailand to the United Nations in Geneva, the ICJ and Human Rights Watch ('HRW') expressed concern regarding the detention of non-military persons in the Facility and the deaths of the two detainees and called for the immediate transfer all non-military persons detained at the Facility to an officially recognized civilian place of detention.<sup>78</sup> No response was received.

#### Independence of judiciary and use of military courts to prosecute civilians

48. Shortly after the *coup*, NCPO Announcements No. 37/2557, 38/2557, and 50/2557<sup>79</sup> expanded the jurisdiction of military courts to certain offences, including purported violations of NCPO orders, national security crimes including a sedition-like offence, possession and use of war weapons, and the overly broad and vague crime of *lèse majesté*.<sup>80</sup> Based on information the Judge Advocate General's Department ('JAG') provided to ICJ and TLHR in December 2016, between 25 May 2014 and 30 November 2016, at least 2,177 civilians were prosecuted in 1,716 cases in military courts located throughout Thailand, including 1,577 cases related to the possession and use of war weapons.<sup>81</sup>
49. While the practice of prosecuting civilians before military courts is being phased out through HNCPO Order No. 55/2559, issued on 12 September 2016, the Order only applies to offences committed on or following the date on which the Order came into force and not to past or pending cases.<sup>82</sup> According to JAG at least 416 civilian cases remain in military courts;<sup>83</sup> and 528 arrest warrants for individuals alleged to have committed crimes prior to HNCPO Order No. 55/2559 remain valid,<sup>84</sup> and therefore anyone arrested in the future on the basis of those warrants will be subject to proceedings before a military court. Of those cases that have concluded, it is not clear how many concerned crimes committed under Martial Law. In such cases, where a person was convicted and wished to appeal, the conviction would be final because the right to appeal was unavailable. While HNCPO Order No. 55/2559 is welcome, Thailand should take the additional step of transferring all pending cases to civilian courts and setting aside the convictions of all civilians prosecuted in military courts since the *coup*.<sup>85</sup>
50. The Thai military justice system is separate and independent from the civilian justice system, accountable only to the Ministry of Defence, which is

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<sup>77</sup> Thai military court rejects abuse claims by suspects in Erawan Shrine blast, Asian Correspondent, Bangkok, <https://asiancorrespondent.com/2016/08/thai-military-court-rejects-abuse-claims-suspects-erawan-shrine-blast/>.

<sup>78</sup> See supra note 76.

<sup>79</sup> Martial Law and the Military Court: Civil and Political Rights in Thailand (22 May 2014-15 January 2015), TLHR, <http://humanrightsinasean.info/system/files/documents/TLHR%20report-Civilians%20in%20Military%20court.pdf>.

<sup>80</sup> Thailand / Freedom of expression: UN expert recommends amendment of *lèse majesté* laws, OHCHR. For more information, please see: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11478&LangID=E>.

<sup>81</sup> The Number of Civilians being tried by Military Courts by Virtue of NCPO Announcements No.37/2557, 38/2557 and 50/2557, Letter between JAG&ICJ, dated 23 November 2016.

<sup>82</sup> Thailand: ICJ welcomes Order phasing out prosecution of civilians in military courts but government must do much more, ICJ, <https://www.icj.org/thailand-icj-welcomes-order-phasing-out-prosecution-of-civilians-in-military-courts-but-government-must-do-much-more/>

<sup>83</sup> See supra note 83.

<sup>84</sup> Requesting the Statistics of Civilians Tried by Military Courts, Letter between JAG&TLHR, dated 13 January 2017.

<sup>85</sup> See supra note 84.

responsible for its administration.<sup>86</sup> At the military court of first instance, only one of the three adjudicators must be a legally trained member of the JAG. The other two must be commissioned officers.<sup>87</sup> While Article 26 of the interim Constitution guarantees the independence of the judiciary, the lack of judicial independence in Thailand since the *coup* is demonstrated by the use of military courts to prosecute civilians, notwithstanding repeated State assertions that military court judges are independent.<sup>88</sup>

51. At the 28<sup>th</sup> Session of the Human Rights Council in March 2015, Thailand claimed, “only a limited number of cases of those who are accused of committing serious offences are submitted to the Military Court.”<sup>89</sup> However, some individuals have been prosecuted in military courts for merely exercising their rights to freedom of assembly and expression. For example, military courts have convicted peaceful protestors for “violations” of the NCPO order prohibiting the political gathering of more than five people and for acts such as holding up anti-*coup* signs outside a Bangkok shopping mall<sup>90</sup> and in a McDonalds restaurant in Chiang Rai Province.<sup>91</sup>

52. The Committee has held that the trial of civilians in military courts may raise “serious problems as far as the equitable, impartial, and independent administration of justice”<sup>92</sup> is concerned. International standards provide that military courts lack the competence, independence, and impartiality to prosecute civilians and in principle should not be used except in strictly exceptional cases.<sup>93</sup> Resorting to military jurisdiction should be limited to military matters or personnel.<sup>94</sup> However, in all cases, including the prosecution of military personnel, the jurisdiction of military courts should be set aside in favour of the jurisdiction of the ordinary courts to conduct inquiries into serious human rights violations such as extrajudicial executions, enforced disappearances and torture, and to prosecute and try persons accused of such crimes.<sup>95</sup>

#### *Right to a Fair Trial*

53. There are many documented examples of violations of fair trial rights in military courts prosecuting civilians in Thailand. In principle, civilian criminal procedures should apply in Thailand’s military courts where there exist no military laws, rules and regulations.<sup>96</sup> Paragraph 80 of Thailand’s Replies states

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<sup>86</sup> Art. 5, Act on the Statute of Military Courts (B.E. 2498).

<sup>87</sup> Arts. 26 and 27, Act on the Statute of Military Courts (B.E. 2498).

<sup>88</sup> Use of military court defended, The Nation, Bangkok, <http://www.nationmultimedia.com/politics/Use-of-military-court-defended-30257234.html>; Col. Winthai reaffirmed that trials under the military court would be based on the judicial process of Thailand just like any other court, Royal Thai Government, Bangkok, [http://www.thaigov.go.th/index.php?option=com\\_k2&view=item&id=83770%3Acol-winthai-reaffirmed-that-trials-under-the-military-court-would-be-based-on-the-judicial-process-of-thailand-just-like-any-other-court&Itemid=341&lang=en](http://www.thaigov.go.th/index.php?option=com_k2&view=item&id=83770%3Acol-winthai-reaffirmed-that-trials-under-the-military-court-would-be-based-on-the-judicial-process-of-thailand-just-like-any-other-court&Itemid=341&lang=en).

<sup>89</sup> Right of Reply, Delegation of Thailand, 28<sup>th</sup> Session of the Human Rights Council, 25 March 2015.

<sup>90</sup> Military court finds 3 men guilty in peaceful protests against coup, Prachatai, Bangkok, <http://prachatai.org/english/node/4345>.

<sup>91</sup> For more information, please see: <http://freedom.ilaw.or.th/en/case/597>.

<sup>92</sup> The Committee, General comment 32, CCPR/C/GC/32, para. 22.

<sup>93</sup> ICJ welcomes UN expert report on military tribunals, ICJ, <http://www.icj.org/icj-welcomes-un-expert-report-on-military-tribunals/>.

<sup>94</sup> Report of the Special Rapporteur on the independence of judges and lawyers, 7 June 2012, A/HRC/20/19.

<sup>95</sup> UN Commission on Human Rights, Draft Principles Governing the Administration of Justice Through Military Tribunals (“Decaux Principles”), U.N. Doc. E/CN.4/2006/58 (2006), 13 January 2006, No. 9.

<sup>96</sup> Section 45, Act on the Statute of Military Courts (B.E. 2498).



that “defendants before Military Court are subject to the same set of rights as those who appear before civilian courts.”<sup>97</sup> In 2015, at the Human Rights Council, Thailand claimed those rights include “the right to legal counsel and the right to be presumed innocent until proven guilty.”<sup>98</sup> However, in practice, numerous violations of the right to a fair trial and various “procedural irregularities” have taken place in military courts where civilians are being prosecuted, which, in turn, raise fair trial concerns, including: the passage of several months before a copy of the indictment is provided to an accused; defence lawyers being prohibited from making copies of the court file, including of important orders such as those concerning bail; the failure of Judges to disclose their names in written decisions; the failure to make hearings accessible to the public in certain cases, including by an explicit order in *lèse majesté* cases or as a result of the fact that the court is located on a military base or because of the small size of the courtroom; refusal to allow the public to take notes; the conduct of inquiries and sentencing hearings in camera; the unusual opening hours of the courts; the absence of stationed judges; and long administrative delays due to the inability of military court personnel to process the sharp increase in the case-load. In addition, there is no right of appeal for any crimes that were committed while Martial Law was in force, including appeals against conviction, sentence and bail refusals, in violation of a defendant’s right to a fair trial and to liberty.<sup>99</sup> Lawyers defending civilians in military courts have also observed that the average length of the proceedings has increased in certain cases due to the time it takes the courts to conduct witness examinations and issue decisions. In at least one case, a civilian decided he would rather plead guilty than await the conclusion of his lengthy military trial.<sup>100</sup>

## **VI. Freedoms of expression and association and right to peaceful assembly**

54. Since the *coup*, the NCPO has used the new legal framework and pre-existing laws, including criminal defamation (Articles 326-328 of the Thai Criminal Code), Article 14 of the Computer-Related Crime Act B.E.2550 (2007) (‘Computer Crime Act’), a sedition-like offence (Article 116 of the Thai Criminal Code), and *lèse majesté* (Article 112 of the Thai Criminal Code), to punish human rights defenders, activists, lawyers, academics, journalists and political opponents. This has given rise to concern about violations of their rights to freedom of expression, association and peaceful assembly.<sup>101</sup> As of 30 November 2016, approximately 588 individuals have been arrested for merely exercising their right to freedom of expression and peaceful assembly.<sup>102</sup> However, the total number nationwide is unknown, as the Government has not released official figures. In 2005, in its Concluding observations, the Committee recommended Thailand to: “take adequate measures to prevent further erosion of freedom of expression [...] and ensure that such cases are

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<sup>97</sup> Thailand’s Replies, para 80

<sup>98</sup> See supra note 91

<sup>99</sup> Art. 61 para 2, Act on the Organization of Military Courts (B.E. 2498); Military Courts to Allow Appeals now that Martial Law is Gone, The Nation, Bangkok, <http://www.nationmultimedia.com/politics/Military-courts-to-allow-appeals-now-that-martial--30257643.html>; Martial Law and the Military Court: Civil and Political Rights in Thailand, TLHR (22 May 2014-15 January 2015), <https://tlhr2014.files.wordpress.com/2015/02/150202-tlhr-report-civilians-in-military-court.pdf>.

<sup>100</sup> *Lèse majesté* suspect with mental illness retracts statement, pleads guilty, Prachatai, Bangkok. <http://www.prachatai.com/english/node/5296>.

<sup>101</sup> See also: Thailand: “they cannot keep us quiet”: the criminalization of activists, human rights defenders, and others in Thailand, AI, <https://www.amnesty.org/en/documents/asa39/5514/2017/en/>.

<sup>102</sup> For more information, please see: <https://freedom.ilaw.or.th/November2016>.

investigated promptly and that suitable action is taken against those responsible, regardless of rank or status."<sup>103</sup>

#### Criminal defamation

55. Human rights defenders, activists, journalists and other civil society actors have faced criminal defamation lawsuits in Thailand. Criminal defamation carries a maximum sentence of one year's imprisonment, while criminal defamation by "means of publication" carries a sentence of up to two years' imprisonment.<sup>104</sup> If the alleged defamation is perpetrated through a computer system, defendants are often also charged under the vaguely worded Article 14 of Computer Crime Act, which carries a maximum sentence of five years' imprisonment.<sup>105</sup> In 2016, the NLA passed amendments to the Computer Crime Act.<sup>106</sup> While Article 14(1) of the Computer Crime Act now explicitly states that it is not to be used for a "defamation offence under the Criminal Code", it remains to be seen how the amended provision will be implemented in practice as it criminalizes a number of acts, including the vaguely worded "Dishonestly or deceitfully input into a computer system of fake or distorted computer data, either in whole or in part, or false computer data, in a manner that is likely to cause public damage in which not the defamation offence under Criminal Code." Unlike Article 14(1), Article 14(2) which criminalizes "input into a computer system false computer data in a manner that is likely to harm the maintenance of national security, public safety, national economic security, public infrastructure serving the public interest, or cause panic among the public," does not contain a provision that it is not to be used as a defamation offence under the Criminal Code leaving this open as a possibility.

#### *Natural Fruit Company Case (Andy Hall)*

56. Natural Fruit Company Ltd. has filed four criminal and civil defamation complaints against Andy Hall, a British human rights defender and labour researcher in Thailand working with a Finnish NGO, *Finnwatch*. In January 2013, Hall's findings were published in a *Finnwatch* report called *Cheap Has a High Price*.<sup>107</sup> The report alleged various human rights abuses taking place at the company such as the confiscation of employees' passports; violence from guards and superiors; dangerous working conditions; child labour; and illegally low wages and overtime.<sup>108</sup> On 3 November 2016, the Thai Supreme Court dismissed one of the criminal defamation proceedings that had arisen in connection with an interview of Andy Hall with *Al Jazeera*.<sup>109</sup> The other three criminal defamation cases are still before the Thai courts. In one of the proceedings, on 20 September 2016, the court of first instance found Andy Hall guilty of defaming the Company under the Thai Criminal Code and violating the

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<sup>103</sup> Concluding observations of the Human Rights Committee on Thailand, CCPR/CO/84/THA, 8 July 2005, at para 18.

<sup>104</sup> Art 326-328, Penal Code of Thailand, please see: <http://www.thailandlawonline.com/laws-in-thailand/thailand-criminal-law-text-translation>.

<sup>105</sup> Computer Crimes Act, Section 14(2), involving the import of false data that is likely to damage the country citations to the cases Section 14(2), involving the import of false data that is likely to damage the country to an offence under the Penal Code. Please see: <http://www.prachatai.com/english/node/117>.

<sup>106</sup> The amended Act was published in the Government Gazette on 24 January 2016 and will come into force 120 days following the date of its publication.

<sup>107</sup> Cheap has a high price, Finnwatch, [http://www.finnwatch.org/images/cheap%20has%20a%20high%20price\\_exec%20summary\\_final.pdf](http://www.finnwatch.org/images/cheap%20has%20a%20high%20price_exec%20summary_final.pdf).

<sup>108</sup> Andy Hall : Computer Crime case, iLaw. <http://freedom.ilaw.or.th/en/case/469#detail>.

<sup>109</sup> Thailand's top court dismisses criminal defamation case against Finnwatch researcher Andy Hall, Finnwatch. <http://www.finnwatch.org/en/news/417--thailand-s-top-court-dismisses-criminal-defamation-case-against-finnwatch-researcher-andy-hall>.

Computer Crime Act.<sup>110</sup> The case is currently under appeal. Following the 20 September 2016 verdict, *Dhamma Kaset*, a Thai poultry company, filed new defamation lawsuits against Andy Hall and Burmese migrant workers in connection with the allegation of abusive treatment toward migrant workers. As a result of these developments, Andy Hall felt he had no option but to leave Thailand.<sup>111</sup>

#### *Phuketwan Case*

57. In December 2013, the Royal Thai Navy lodged a criminal complaint against two editors of an online news website in Thailand, *Phuketwan*, for quoting a *Reuters* article that implicated “Thai naval forces” in the trafficking of Rohingya.<sup>112</sup> The journalists were charged with criminal defamation and violation of the Computer Crime Act.<sup>113</sup> Despite international pressure, including by the ICJ, to drop the charges,<sup>114</sup> a three-day trial took place in July 2015. On 1 September 2015, the Court acquitted both accused on all counts, ruling, *inter alia*, that the Computer Crime Act was not intended to be used in cases of defamation.<sup>115</sup> The Case concluded on 15 January 2016 with the expiry of the time within which to appeal their acquittal.

#### *Case of three human rights defenders documenting allegations of torture*

58. On 26 July 2016, following a complaint by a Thai military officer - made on behalf of Internal Security Operations Command, tasked with security in Thailand’s deep South - three human rights defenders, Ms. Pornpen Khongkachonkiet, Mr. Somchai Homlaor and Ms. Anchana Heemina, were charged with criminal defamation and violation of the Computer Crime Act, for publishing a report that documented 54 alleged cases of torture and other ill-treatment by the Thai authorities in the country’s deep South since 2004.<sup>116</sup> The police investigation is ongoing. If convicted, the human rights defenders could each face up to seven years imprisonment.

#### *Cases against communities*

59. Numerous defamation lawsuits have been brought against members of communities impacted by development. For example, defamation lawsuits lodged by *Akara Resources* against anti-mine activists in Pichit Province who

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<sup>110</sup> Thailand: verdict in Andy Hall case underscores need for defamation to be decriminalized, ICJ, <https://www.icj.org/thailand-verdict-in-andy-hall-case-underscores-need-for-defamation-to-be-decriminalized/>.

<sup>111</sup> Andy Hall, labor rights activist, leave the country after being sued for another case (TH), Benar News, Bangkok. <http://www.benarnews.org/thai/news/hall-paris-11072016105723.html>

<sup>112</sup> Thailand: immediately withdraw criminal defamation complaint against human rights defender, ICJ, <http://www.icj.org/thailand-immediately-withdraw-criminal-defamation-complaint-against-human-rights-defender/>; Local EU Statement on the increasing misuse of criminal defamation laws in Thailand, EU, [http://eeas.europa.eu/delegations/thailand/documents/news/141114\\_eu\\_homs\\_statement\\_on\\_misuse\\_of\\_criminal\\_defamation\\_laws\\_en.pdf](http://eeas.europa.eu/delegations/thailand/documents/news/141114_eu_homs_statement_on_misuse_of_criminal_defamation_laws_en.pdf).

<sup>113</sup> Thailand: end prosecution of Phuketwan journalists for reporting on Rohingya trafficking crisis, ICJ, <http://www.icj.org/thailand-end-prosecution-of-phuketwan-journalists-for-reporting-on-rohingya-trafficking-crisis/>.

<sup>114</sup> The Phuketwan trial: an insidious prosecution of free expression, ICJ, <http://www.icj.org/the-phuketwan-trial-an-insidious-prosecution-of-free-expression/>.

<sup>115</sup> Thailand: end prosecution of Phuketwan journalists and repeal criminal defamation laws, ICJ, <http://www.icj.org/thailand-end-prosecution-of-phuketwan-journalists-and-repeal-criminal-defamation-laws/>.

<sup>116</sup> Thailand: stop use of defamation charges against human rights defenders seeking accountability for torture, ICJ, <https://www.icj.org/thailand-stop-use-of-defamation-charges-against-human-rights-defenders-seeking-accountability-for-torture/>.

opposed the company's mining operations;<sup>117</sup> and defamation lawsuits brought by a goldmining company, *Tungkum Ltd.*, against local activists<sup>118</sup> and the Thai Public Broadcasting Service,<sup>119</sup> in connection with the impact of the company's open-pit gold mine in Loei Province.<sup>120</sup> While in some of these cases the prosecuting authorities or the courts have eventually acted in a manner consistent with the freedom of expression and opinion of the individuals concerned,<sup>121</sup> these cases have had the effect of discouraging people from exercising their rights to freedom of opinion and expression out of fear of prosecution.

60. The Committee has held that "Defamation laws must be crafted with care to ensure that they... do not serve, in practice, to stifle freedom of expression...At least with regard to comments about public figures" and "a public interest in the subject matter of the criticism should be recognized as a defence [...] States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."<sup>122</sup>

### Sedition

61. Article 116 of the Criminal Code criminalizes "actions that aim to change the government, create unrest amongst people or cause people to transgress the law". This sedition-like offence carries a maximum penalty of seven years' imprisonment. Since the *coup*, there has been an increase in the use of Article 116 to charge politicians,<sup>123</sup> human rights defenders,<sup>124</sup> and students<sup>125</sup> who have peacefully gathered to express critical opinions towards the military government. According to a leading Thai NGO, the Internet Law Reform Dialogue ('iLaw'), at least 62 people have been accused of and/or prosecuted for violations of Article 116 since the *coup*.<sup>126</sup>
62. On 3 July 2015, Mr. Baramee Chaiyarat, a board member of Amnesty International Thailand and coordinator of the Thai NGO, Assembly of the Poor, was summoned following accusations against him made by a military officer.<sup>127</sup> He was charged with sedition and violation of HNCPO Order No. 3/2558, prohibiting the gathering of five or more persons for a political purpose, in

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<sup>117</sup> Court dismisses mining lawsuit against local activists, Prachatai, Bangkok, <http://www.prachatai.com/english/node/6712>.

<sup>118</sup> Thung Kham Company withdraw defamation lawsuit against Kon Rak Ban Kerd Group, Lawyer said there are still many cases left, Prachatai, Bangkok. <http://prachatai.com/journal/2016/03/64556> (Accessed 20 January 2017)

<sup>119</sup> Thailand: Court Dismisses Criminal Defamation Case against Thai PBS and Journalists, Fortify Rights. <http://www.fortifyrights.org/publication-20161117.html> (Accessed 20 January 2017)

<sup>120</sup> "Development" and its discontents in Thailand, ICJ, <https://www.icj.org/development-and-its-discontents-in-thailand/>

<sup>121</sup> For example, *Tungkam Limited v. Thai PBS*. In this case, the criminal court in Bangkok ruled that the complaint lacked merit and that Thai PBS and its journalists acted professionally and relied on credible sources, including the findings from government agencies and local villagers. Another example is Akara Resources v. anti-mine activists. The court ruled that the defendants deserved the right to reveal useful information to the public.

<sup>122</sup> The Committee, General Comment 34, CCPR/C/GC/34, para. 7.

<sup>123</sup> Chaturon: Defying NCPO order 41/2014, Section 116, CCA, iLaw, <http://freedom.ilaw.or.th/en/case/600>.

<sup>124</sup> Human rights defender denies sedition charge, Prachatai, Bangkok, <http://www.prachatai.com/english/node/5369>.

<sup>125</sup> Thailand: Junta Arrests 14 Student Activists, HRW, <https://www.hrw.org/news/2015/06/27/thailand-junta-arrests-14-student-activists>.

<sup>126</sup> For more information, please see <https://freedom.ilaw.or.th/politically-charged>.

<sup>127</sup> High profile Thai human rights defender accused of sedition, Prachatai, Bangkok, <http://www.prachatai.com/english/node/5276>.

response to his public support, in June 2015, of a group of 14 students protesting the *coup*.<sup>128</sup> On 14 September 2016, one year after the alleged acts, Ms. Sirikan Charoensiri, a human rights lawyer and specialist at TLHR, was charged with the same offences as 14 anti-*coup* student activists TLHR was providing legal assistance to - namely sedition and violation of HNCPO Order No. 3/2558.<sup>129</sup> If Mr. Baramée Chaiyarat and Ms. Sirikan Charoensiri are indicted they will face trial in a military court. The ICJ believes that the charges against Ms. Sirikan Charoensiri, have been brought, at least in part, as retaliation for her international human rights advocacy.<sup>130</sup>

### Lèse Majesté

63. The crime of *lèse majesté*, defined as anyone who "defames, insults or threatens the King, the Queen, the Heir-Apparent or the Regent," is punishable by up to 15 years in prison. In some cases, *lèse majesté* cases are held *in camera* with "national security" being cited as the justification. Since the *coup*, there have been at least 90 *lèse majesté* cases tried by military tribunals and criminal courts, a noted increase from before the *coup*.<sup>131</sup> On 7 February 2017, the UN Special Rapporteur on the promotion of freedom of opinion and expression, called on the Thai authorities to stop using *lèse majesté* provisions as a political tool to stifle critical speech.<sup>132</sup> Other recurrent human rights concerns to which *lèse majesté* proceedings have given rise include the denial of bail even in cases of persons suffering from serious medical conditions and the conduct of proceedings *in camera*.<sup>133</sup> Not only has there been an increase in the number of prosecutions for *lèse majesté*, but the length of prison sentences imposed in certain cases have lengthened recently too. On 7 August 2015, separate military courts in Bangkok and Chiang Mai Province sentenced a man and a woman to 30 and 28 years' imprisonment, respectively, following guilty pleas, for several Facebook posts deemed critical of the monarchy. The UN Office of the High Commissioner for Human Rights ('OHCHR') stated that these are the highest sentences imposed for *lèse majesté* since they began documenting them in 2006.<sup>134</sup> Prior to the guilty pleas, the Courts envisaged sentencing the defendants to 60 and 56 years' imprisonment, respectively. There is also concern about individuals who has been charged under this law for merely sharing news on Facebook or posting a message in Facebook messenger. For example, the case of Mr. Jatupat ("Pai") Boonpattaraksa, a key member of Northeastern-based pro-democracy group, who has been arrested and charged for allegedly sharing and quoting a BBC Thai Article on King Rama X's profile on Facebook.<sup>135</sup> Another case concerns Ms. Patnaree Chankij, the mother of a prominent activist, who is facing charges under Article 112 for

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<sup>128</sup> Human rights defender denies sedition charge, Prachatai, Bangkok, <http://www.prachatai.com/english/node/5369>.

<sup>129</sup> Lawyer Sirikan reports to police for sedition and political gathering charges, TLHR. <http://www.tlhr2014.com/th/?p=2577>; Thailand: immediately end harassment and intimidation of human rights lawyer Sirikan Charoensiri, ICJ. <http://www.icj.org/thailand-immediately-end-harassment-and-intimidation-of-human-rights-lawyer-sirikan-charoensiri/>.

<sup>130</sup> Thailand: immediately drop sedition case and all proceedings against human rights lawyer Sirikan Charoensiri, ICJ, <https://www.icj.org/thailand-immediately-drop-sedition-case-and-all-proceedings-against-human-rights-lawyer-sirikan-charoensiri/>

<sup>131</sup> See supra note 104.

<sup>132</sup> Commission on Human Rights, Administration of justice, rule of law and democracy, Issue of the administration of justice through military tribunals, Report submitted by the special rapporteur, Emmanuel Decaux, E/CN.4/Sub.2/2005/9, 2 June 2005, <http://www2.ohchr.org/english/bodies/subcom/57/docs/ecn4sub2-2005-9-E-final.doc>

<sup>133</sup> For more information, please see: [https://spdb.ohchr.org/hrdb/29th/public\\_UA\\_Thailand\\_08.12.11.14\\_\(13.2014\).pdf](https://spdb.ohchr.org/hrdb/29th/public_UA_Thailand_08.12.11.14_(13.2014).pdf).

<sup>134</sup> Press briefing note on Thailand and Mali, OHCHR. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16310&LangID=E>.

<sup>135</sup> Pai 'Dao Din' Arrested for LM Offence after Sharing BBC Thai Article, TLHR, <http://www.tlhr2014.com/th/?p=2992>.

giving a 'ja' (a non-committal, colloquial 'yes' in Thai language) response on Facebook Messenger during a private conversation.<sup>136</sup> This reply was allegedly deemed to be a *lèse majesté* statement and she is now facing trial in military court.

#### Intervention in social and political events

64. The Thai authorities intervened in 34 social and political events planned in 2016, 68 in 2015, and 42 in 2014.<sup>137</sup> In some cases, following their intervention, the event was cancelled. In September 2014,<sup>138</sup> and again in June 2015,<sup>139</sup> the NCPO prohibited TLHR from holding a public event to launch a report on the human rights situation after the *coup*. In June 2015, the authorities cancelled the public launch of a HRW report<sup>140</sup> on the persecution in Vietnam of a Vietnamese ethnic minority, claiming it could damage national security and relations between the two countries.<sup>141</sup> In September 2016, Amnesty International cancelled the public launch of a report on torture in Thailand after police warned the group that its international representatives might be arrested and prosecuted for visa violations.<sup>142</sup>

#### Suppression of opinion over draft Constitution

65. During the run-up to the Constitutional Referendum in August 2016, HNCPO Order No. 3/2558 and the Organic Act on Referendum for the Draft Constitution B.E.2559 (2016) ('Constitutional Referendum Act') were used to suppress criticism, debate and other expression and campaigns in relation to the referendum process. Specifically, Article 61 criminalizes a number of acts including the vaguely worded "instigate trouble in order to cause disorder in the voting" which includes "any person who disseminates texts, pictures, sound in newspaper, radio, television, electronic media or any other channels that are distorted from the fact or having violent, aggressive, rude, inciting, or threatening characteristics aiming to induce eligible voters refrain from voting or vote in a certain way or abstain from voting." The maximum penalty for violating Article 61 is ten years imprisonment and 200,000 Thai Baht. At least 207 persons, who had been engaged in campaigning prior to and during the referendum were prosecuted with the offence of violating the ban on political gathering under HNCPO Order No. 3/2558 and the Constitutional Referendum Act. At least 47 of them are accused of violating Section 61 paragraph 2<sup>143</sup> of the Constitutional Referendum Act.<sup>144</sup> For example, in July 2016, two of TLHR officers, Ms. Neeranuch Niemsub and Ms. Duangthip Karnrit, were present at a

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<sup>136</sup> HRW condemns arrest of Ja New's mother, The Nation, Bangkok, <http://www.nationmultimedia.com/breakingnews/Human-Rights-Watch-condemns-arrest-of-Ja-News-moth-30285482.html>.

<sup>137</sup> Annual Civil and Political Rights Report (2016), iLaw, <https://freedom.ilaw.or.th/PoliticalRightandFreedoms2016>.

<sup>138</sup> NCPO forces rights groups to cancel forum, Bangkokpost, Bangkok, <http://www.bangkokpost.com/lite/topstories/430103/ncpo-forces-rightsgroups-to-cancel-forum>.

<sup>139</sup> Thai police force cancellation of talk on human rights, Prachatai, Bangkok, <http://www.prachatai.com/english/node/5126>.

<sup>140</sup> Persecuting "Evil Way" Religion, HRW, <https://www.hrw.org/report/2015/06/26/persecuting-evil-way-religion/abuses-against-montagnards-vietnam>.

<sup>141</sup> Thailand blocks human rights group's launch of Vietnam report, The Guardian, UK, <http://www.theguardian.com/world/2015/jun/26/thailand-human-rights-vietnam-report>.

<sup>142</sup> Thai authorities prevent press briefing on state-sponsored torture, Prachatai, Bangkok, <http://www.prachatai.com/english/node/6599>.

<sup>143</sup> Thailand's Referendum Act (2016), Article 61, criminalizes acts of disseminating false information to influence voters or otherwise disrupt the referendum with 10 years of imprisonment and a loss of voting rights for 10 years.

<sup>144</sup> See supra note 70

discussion on the draft Constitution in Khon Kaen province to monitor the event, and had no involvement with the organizing parties. Although they clearly identified themselves as observers to the authorities, they were charged with violating HNCPO Order No. 3/2558 for allegedly organizing the discussion with the activists. They will face trial in a military court if indicted.<sup>145</sup> In the same month, four activists were charged under the Constitutional Referendum Act for “believably getting prepared to distribute” alleged *Vote-No* fliers, after the police searched one of the suspects’ car without a warrant. A journalist who was covering the news was also charged with the same offence, despite identifying himself with a press ID.<sup>146</sup>

### Freedom of Assembly

66. The prohibition on public gatherings of five people or more for political purposes, imposed through NCPO Announcement No. 7/2557 and, later, HNCPO Order No. 3/2558,<sup>147</sup> has been used to legally harass human rights defenders, activists, journalists and lawyers. In the period between the *coup* and 30 November 2016, at least 588 individuals were arrested for exercising their right to peaceful assembly.<sup>148</sup>

#### *Anti-coup demonstration*

67. On 22 May 2015, on the one-year anniversary of the *coup*, 38 students and activists were arrested for peacefully demonstrating in front of the Bangkok Art and Culture Center while another seven were arrested and charged with violating HNCPO Order No. 3/2558 in Khon Kaen Province.<sup>149</sup> They were released the following day. On 26 June 2015, in Bangkok, the police and military officers arrested 14 students who had been protesting the 22 May 2015 arrests. They were held in the custody of the Bangkok Remand Prison for 12 days. The students were released on 8 July 2015 and were charged with sedition and violation of HNCPO Order No. 3/2558. The investigation is ongoing. If indicted, they will face prosecution before a military court.

#### *Public Assembly Act*

68. A number of human rights defenders have been charged under the Public Assembly Act B.E. 2558 (2015), which came into force on 13 August 2015. Based on the Act, a public assembly which takes place without submitting an application for prior approval or a public assembly banned by the authorized body is regarded as an unlawful assembly. The organizer of the event also risks criminal penalties in certain circumstances under the Act.<sup>150</sup>

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<sup>145</sup> More human rights activists face prosecution long after referendum, TLHR, <http://www.tlhr2014.com/th/?p=2335>.

<sup>146</sup> Vote-No Activists and Reporter Prosecuted under Constitution Referendum Act, TLHR, <http://www.tlhr2014.com/th/?p=1107>.

<sup>147</sup> According to HNCPO Order No. 3/2558, contravention against the ban on public gathering is punishable by 6-month-imprisonment and/or a fine of up to 10,000 Thai baht.

<sup>148</sup> See supra note 104

<sup>149</sup> Thailand: Arrests on coup anniversary are a stark reminder of ongoing repression, AI, <https://www.amnesty.org/en/latest/news/2015/05/thailand-arrests-on-coup-anniversary-stark-reminder-of-repression/>; Arrest of one of the 14 students of New Democracy Movement (NDM), TLHR, <https://tlhr2014.wordpress.com/tag/thailand/>.

<sup>150</sup> For example, a pro-democracy lawyer, Mr. Anon Nampa, was fined for not asking at least 24 hours in advance for hosting any public assembly. For more information, please see: <http://www.matichon.co.th/news/403843>; in another case concerning the protesters marching to object the Khon Kaen Land Transport Control Board’s resolution to relocate the bus terminal, one defendant was sentenced to 1 year and 15 days and fined for organizing a demonstration and blocking entrances and exits of government compound. Another defendant was sentenced for 1 month and 15 days and fined for participating in the protest.

69. Local communities have been fearful of holding non-political community gatherings in case the military either deliberately or mistakenly interprets them as being political. For example, one community called *Khon Rak Ban Koed* ('KRBK') in Loei Province engaged in resisting local gold mining in Northeastern Thailand told the ICJ in June 2014 that the NCPO order banning political assembly had made them fearful of holding community events to discuss non-political community issues. On 18 December 2016, seven members of KRBK reported to the Police Station after receiving summonses. The police accused them of violating the Public Assembly Act for not informing the authorities in advance about a gathering on 16 November 2016 in front of an administrative building while the officials were considering a mining concession.<sup>151</sup>

## VII. RECOMMENDATIONS

70. In light of the above concerns, the ICJ and TLHR consider that the Thai authorities should implement the following recommendations:

### Constitutional and legal framework within which the Covenant is implemented

- a. Repeal or amend the interim Constitution consistent with Thailand's obligations under the Covenant, including as a matter of priority Articles 44, 47 and 48 and take all necessary steps to ensure the reinstatement of a constitution that protects and promotes human rights;
- b. Amend the draft Constitution endorsed by a public referendum on 7 August 2016 to ensure it is consistent with Thailand's obligations under the Covenant;
- c. Amend or, where appropriate, repeal, all laws and NCPO orders and announcements, which restrict the exercise of Covenant rights, including HNCPO Orders No. 3/2558 and 13/2559;

### States of emergency

- d. Lift Martial Law where it is in force in Thailand and all other emergency measures in place throughout the country, including all laws and NCPO orders and announcements which restrict the exercise of Covenant rights, and remove the derogations notified under Article 4 of the ICCPR;

### Right to life and prohibition of torture and cruel, inhuman or degrading treatment or punishment

- e. Carry out prompt, impartial, independent and effective investigations into all alleged cases of enforced disappearance, torture and other ill-treatment and custodial deaths in disputed circumstances, including those mentioned above;
- f. Provide effective remedies and reparations to victims and their families, as relevant, and take all necessary steps to bring perpetrators to justice;
- g. Amend the draft Prevention and Suppression of Torture and Enforced Disappearance Act to ensure that it is consistent with Thailand's

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For more information, please see: [goo.gl/W22Q0W](http://goo.gl/W22Q0W)

<sup>151</sup> 7 anti-mine activists summoned under Public Assembly Act, Prachatai, Bangkok. <http://prachatai.com/english/node/6795>.



obligations under the Covenant, CAT and ICPPED;

Right to liberty and security of the person, treatment of persons deprived of their liberty, fair trial and independence of judiciary

- h. Apply procedures for arrest and detention that adhere to international human rights law and standards, including the requirement that all detained persons must be brought before a judge promptly to challenge the lawfulness of the detention, the conditions of detention, and the right to be held in places officially recognized as places of detention;
- i. Ensure that the fair trial rights of all detainees, suspects, and accused persons are upheld including the right to access a lawyer without delay;
- j. Transfer all cases of civilians facing proceedings before military courts to civilian courts, order a retrial in civilian courts of all civilians convicted of an offence in military courts, and amend the Martial Law and the Act on the Organization of the Military Court B.E. 2498 to prohibit the prosecution of civilians in military courts;
- k. Ensure that in all cases, including the prosecution of military personnel, where the defendant is accused of serious human rights violations such as extrajudicial executions, enforced disappearances and torture, the proceedings take place in a civilian court;

Freedoms of expression and association and right to peaceful assembly

- l. Repeal Articles 326 to 328 of the Criminal Code, which criminalize freedom of expression, to ensure compliance with Thailand's international legal obligations under the Covenant;
- m. Further amend Article 14 of the Computer Crimes Act to ensure it is not used to criminalize freedom of expression in any circumstances;
- n. Amend Article 112 of the Criminal Code to ensure it is consistent with Thailand's international legal obligations under the Covenant;
- o. Ensure Article 116 of the Criminal Code is not used to prosecute individuals for exercising their human rights including to freedom of expression and assembly;
- p. Amend or, where appropriate, repeal, all laws and NCPO orders and announcements, including as a matter of priority HNCPO Orders No. 3/2558 and 5/2558, which prevent the effective realization of human rights, including freedom of expression and assembly;
- q. Allow all political and social events which are being held peacefully to proceed, consistent with the rights to freedom of expression, peaceful assembly and association, acknowledging that such events are an important part of a free and democratic society; and
- r. End all proceedings against individuals facing investigation, charges, or indictment for merely exercising their rights under the Covenant and provide them with remedies and reparation where appropriate.