

Thailand: 10 years after the military coup, Rule of Law remains to be fully restored

Ten years ago today, the Thai military, operating under the name of the National Council for Peace and Order (NCPO), staged a coup d'état, dismantling institutional arrangements critical to the operation of the rule of law and the protection of human rights. The International Commission of Jurists (ICJ) calls for a review by the executive government and parliament of Thailand of all remaining NCPO orders, including those already enacted into law, with a view to repealing or revising those non-compliant with the rule of law and Thailand's obligations under international human rights law.

Between the coup d'état on 22 May 2014 and the dissolution of the NCPO in July 2019, the NCPO and the Head of the NCPO ruled in part by executive fiat, issuing [more than five hundred](#) orders and similar announcements. These orders were deemed legal, constitutional, and final under the [interim constitution](#) in force at that time, although they bypassed the role of a democratically elected legislature and were clearly inconsistent with core rule of law principles.

"Ten years have passed and countless orders undermining the enjoyment of human rights and fundamental freedoms persist, negatively impacting individuals as well as entire communities in relation to a range of issues, from political expression and individual liberty to concerns about health and environmental rights, without legal remedy and judicial oversight," said Melissa Upreti, ICJ's Asia-Pacific Regional Director.

"We call on the Royal Thai Government and Parliament to immediately institute a transparent review process of all these orders through broad-based consultations and the meaningful participation of all stakeholders, guided by the principles of the rule of law and respect for human rights. Such a process must involve recognition of the detrimental impact of these orders, including those subsequently enacted into law, and lead to prompt access to effective judicial and other remedies, as well as the establishment of institutional safeguards against similar infringements of rights in the future."

Orders currently in force that are non-compliant with international human rights law include those that grant the military expanded powers over civilian authorities, including broad investigatory, arrest, and detention authority without judicial oversight, in violation of the right to liberty and security of the person, among other rights. There are also orders that adversely affect entire communities and the environment by altering land or environmental protection frameworks, bypassing the usual protections that exist in domestic law, thereby violating a wide range of social, economic, and cultural rights, as well as the right to a safe, clean, healthy, and sustainable environment.

Background

Following the coup d'état, the NCPO embarked on a [much-contested process](#) to draft and adopt a new constitution, culminating in the 2017 Constitution presently in force. The lawfulness of the NCPO orders continues to be recognized by the [2017 Constitution](#), which, under Article 279, stipulates that all orders, announcements, and acts of the NCPO and its Head must be considered constitutional and lawful and shall remain in force unless repealed or amended by the passage of an Act, or through an order of the Prime Minister or a resolution of the Council of Ministers, if such orders are the exercise of executive power.

In 2017, the UN Human Rights Committee [expressed concern](#) that Article 279 of the 2017 Constitution would continue to provide immunity to the NCPO for its acts, announcements, and orders. The Committee recommended that Thailand ensure all measures adopted are consistent with its obligations under the International Covenant on Civil and Political Rights (ICCPR), to which it is a party, including the obligation to provide effective remedies to victims of human rights violations. However, so far, none of those affected by the NCPO orders have been provided with effective remedies.

Before the NCPO was dissolved in 2019, the Head of the NCPO issued Orders Nos. [22/2561](#) and [9/2562](#), which repealed, in whole and/or in part, at least 87 NCPO orders and announcements (9 orders under Order No. 22/2561 and at least [78 orders](#) under Order No. 9/2562). However, a number of other orders and announcements that are clearly inconsistent with Thailand's international human rights obligations remain in force.

NCPO Orders Nos. [3/2558](#) and [13/2559](#) grant the military broad investigatory, arrest, and detention authority for up to seven days without judicial oversight. It is not clear whether these powers have been exercised in recent years.

Head of NCPO Order No. [14/2559](#) permits the NCPO to establish its own advisory committee, disrupt the function of the Advisory Council of the Southern Border Administration and Development under the Southern Border Provinces Administrative Center (SBPAC), and direct the civilian-run SBPAC to seek and implement advice from the military-led International Security Operation Command (ISOC). This has served to hamper the [effectiveness of the SBPAC](#) and has contributed to the lack of public participation in the SBPAC's decision-making process.

Head of NCPO Orders Nos. [17/2558](#), [3/2559](#), [74/2559](#), and [31/2560](#) allow for land conversions that previously served as protected forest areas or lands reserved for the benefit of landless farmers for purposes other than those originally designated, including the facilitation of the development of border special economic zones (SEZs), bypassing the usual protections that exist in domestic law.

Head of the NCPO Orders Nos. [2/2560](#), [28/2560](#), and [47/2560](#), which modified crucial processes around town planning and facilitated the fast-tracking of environmental impact assessments within the Eastern Economic Corridor (EEC), were repealed, but their impacts

remain since the orders were incorporated into the [Eastern Special Development Zone Act B.E. 2561](#), passed by the junta-appointed National Legislative Assembly (NLA) in 2018.

Head of NCPO Order No. [9/2559](#), which allowed for the bidding of certain projects before the completion of the assessment of environmental impacts, was repealed, yet the problematic provision was integrated into a section of the [Promotion and Conservation of National Environmental Quality Act \(No. 2\) B.E. 2561](#), also passed by the junta-appointed NLA in 2018.

The Forest Reclamation Policy under NCPO Order Nos. [64/2557](#) and [66/2557](#), which authorized the arrest of those allegedly encroaching on or damaging the forest, was repealed. However, prosecutions and actions against forest-dependent communities initiated under these repealed orders continue. Individuals in these communities remain at risk of being subject to prison sentences under the National Reserved Forest Act and the National Park Act. Evictions are still [ongoing](#) with no option of return.

The Thai government, including the [current administration](#), has taken steps to repeal some of these orders, and there have been a [number of bills](#) proposed in the House of Representatives. Yet, progress has remained elusive.

Further Reading

ICJ and Thai Lawyers for Human Rights (TLHR)' analysis of the impact of orders and announcements made by the NCPO and its Head, as part of the submission to the UN Human Rights Committee in 2017, in [English](#) and [Thai](#).

ICJ, TLHR and Cross-Cultural Foundation' analysis of the Head of the NCPO Orders Nos. 22/2561 and 9/2562, as part of the supplementary submission made to the UN Human Rights Committee in 2020, in [English](#) and [Thai](#).

ICJ's analysis of the impact of NCPO orders and announcements in the course of developing SEZs and EEC in Thailand, in [English](#) and [Thai](#).

ICJ, EnLAWTHAI Foundation, and Land Watch Thai' analysis of the impact of the NCPO on other economic, social, and cultural rights, as part of the submission to the UPR in 2021, in [English](#)