

THAILAND: ATTITUDE ADJUSTMENT

100 DAYS
UNDER MARTIAL LAW

AMNESTY
INTERNATIONAL



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GLOSSARY

CCA	Computer Crimes Act
CPED	International Convention for the Protection of all Persons from Enforced Disappearances
ICCPR	International Covenant on Civil and Political Rights
ICESRC	International Covenant on Economic, Social and Cultural Rights
MLA	Martial Law Act
NCPO	National Council for Peace and Order, Thailand's military administration that took power on 22 May 2014
NGO	Non-governmental organization
NHRCT	National Human Rights Commission of Thailand
NLA	National Legislative Assembly
NPOMC	National Peace and Order Maintaining Council, original name of the NCPO until 24 May 2014
NRC	National Reform Council
OHCHR	Office of the United Nations High Commissioner for Human Rights
PAD	People's Alliance for Democracy, also known as the 'Yellow Shirts', originally a coalition of protestors against Thaksin Shinawatra
PDRC	People's Democratic Reform Committee, a now-disbanded political pressure group aimed at removing Thaksin Shinawatra from Thai politics and achieving political reforms
PTP	Pheu Thai Party, in power until the NCPO took power on 22 May 2014
SR on FPAA	UN Special Rapporteur on the rights to freedom of peaceful assembly and association
UDD	United Front for Democracy Against Dictatorship, a political pressure group associated with the 'Red Shirts' movement
UN	United Nations
UNCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

ATTITUDE ADJUSTMENT IN NUMBERS¹

Number of individuals ordered to report and/or detained and arrested: 665

Number of individuals officially ordered to report to National Council for Peace and Order (NCPO): 571*

Number of individuals detained: 242

Number of individuals ordered to report or detained by affiliation:

Related to United Front for Democracy Against Dictatorship (UDD) / Pheu Thai Party (PTP): 395

Related to People's Democratic Reform Committee (PDRC)/Democrat Party/ People's Alliance for Democracy (PAD): 51

Academics, writers, journalists and activists: 141

Arrests at peaceful demonstrations: 78

Total: 665

Number facing criminal prosecution after report order/detention: 86²

Before military courts: 61

Before civilian courts: 26

Individuals charged with failing to comply with orders to report to NCPO: 10

Individuals charged with illegal gatherings and/or incitement to cause unrest (section 116 Criminal Code): 52

Individuals charged with terrorism/plotting terrorist acts (section 135/1 and/or 135/2 of the Criminal Code): 26

Individuals charged with illegal possession of "war weapons": 32

Individuals charged or under investigation with lèse majesté' (section 112 of the Criminal Code): 14

Individuals charged with other related crimes: 4

Number of Thai passports revoked under NCPO orders: at least 11

**Due to a high number of informal orders to report and difficulties in confirming unofficial data or incidents not recorded, the actual number of those ordered to report to the military is thought to be significantly higher. In the first weeks after the coup, the NCPO ordered persons to report to the military leadership through public announcements, often through television broadcasts. However, Amnesty International received testimonies of individuals ordered to report through other channels. Since the public announcements ended, dozens are believed to have been ordered to report through unofficial channels, although exact numbers have been difficult to verify. According to the Office of the UN High Commissioner for Human Rights (OHCHR), over 700³ people have been ordered to report to the NCPO and arrested since the coup.*

1. INTRODUCTION

“People invited under Martial Law and not yet accused are only invited for conversations to adjust their way of thinking. People with different thoughts will have the tendency to create violence – they were invited in to adjust their way of thinking and return them to society. After that there will be no control on them – society will monitor them.”⁴

Bangkok Metropolitan Deputy Police Commissioner Amnuay Nimmano, in a meeting with Amnesty International, Bangkok, Thailand, July 2014, in response to a question about the criteria used by the authorities to select people to report to army detention.

On 22 May 2014, two days after declaring Martial Law, Thailand’s military took power for the second time in eight years. Under the National Council for Peace and Order (NCPO)⁵ – made up of the chiefs of the country’s military and civilian security forces, and headed by the Royal Thai Army’s Commander-in-Chief, General Prayuth Chan-ocha – the military abrogated all but one section of the 2007 Constitution,⁶ including the removal of all human rights provisions, sacked the government, dissolved parliament and assumed full control of the country.

In Announcement 1/2557,⁷ the NCPO explained that it was seizing power “... in order to ensure a prompt return to normalcy in the nation, harmony and unity among Thai citizens, to reform political, economic, social and other national structure[s], as well as to ensure fairness to all sides...”.

As this report will show, the NCPO has undertaken a series of measures that have altered Thailand’s institutional and legal framework, removing or weakening human rights protections. It has implemented existing laws, Martial Law and new vaguely-worded orders to stop “political activities” and “adjust attitudes” of would-be dissenters.

Many of these laws and orders in and of themselves violate human rights, including by

creating restrictions on human rights which go beyond those allowed under international law. Moreover, the often discriminatory and arbitrary implementation of military orders and laws, as well as the resort to measures not sanctioned even by such military legislation, has resulted in numerous human rights violations.

Since taking power, the NCPO has arbitrarily detained hundreds of individuals, including journalists, academics, students, politicians, social and political activists. The majority of those are now constrained by arbitrary restrictions on their liberties under threat of prosecution, and scores may now face unfair trials for peacefully exercising their human rights.

Some detainees have been held incommunicado in military camps and others in unofficial places of detention. In at least two cases, individuals have been subject to enforced disappearance. More recently, allegations of torture or other ill-treatment have emerged.

The NCPO has implemented sweeping restrictions on freedom of expression, blocking and shutting down websites and community radio stations and stopping the dissemination of critical information, including in schools and universities.

Peaceful gatherings of more than five people are no longer allowed, with dozens arrested for peacefully protesting. Restrictions on the rights to freedom of expression and peaceful assembly have had serious implications for the legitimate work of human rights defenders (HRDs) and organizations, including Amnesty International's national Section in Thailand.

The right to a fair trial is also in jeopardy, as some 60 individuals imminently face trials in military courts, with no right of appeal. Amnesty International considers that military courts should not have the jurisdiction to try civilians, owing to the nature of these courts and because of concerns about their independence and impartiality.⁸

VIOLENCE BEFORE THE COUP

Upon taking power, the NCPO declared public gatherings of more than five persons illegal, putting a stop to demonstrations that had taken place in Bangkok and some other provinces since November 2013. Acts of violence in the form of sporadic clashes between supporters of the government and its opponents, the People's Democratic Reform Committee (PDRC), and targeted attacks on demonstrations led to the deaths of 25 persons and 825 injuries. The demonstrations, which were triggered by widespread protest at the first passing of a blanket amnesty bill, were aimed at forcing the resignation of the government and preventing new elections in favour of an appointed council of leaders to reform the country's political system.

The NCPO has characterized its use of Martial Law powers as necessary and proportionate to the need to preserve security. However, while acknowledging the security concerns that characterized the situation in Thailand prior to the military takeover, Amnesty International considers that the NCPO's laws and orders, policy and practice cannot be justified by this need. Security considerations cannot justify the large-scale and multidimensional human rights violations that have been perpetrated by the military government.

Further, contrary to the NCPO's stated aim of inspiring national reconciliation after years of

political strife, Amnesty International has found that the cumulative effect of these broad restrictions and the threat of detention and prosecution for peaceful expression are engendering a climate of fear and a culture of enforced silence.

The human rights violations detailed in this report also reflect long-standing human rights problems in Thailand that have been repeatedly raised with Thai authorities by Amnesty International and others. These include the lack of safeguards for the rights of detainees in emergency legislation and Martial Law; persistent and widespread allegations of torture and other ill-treatment;⁹ as well as a "culture of impunity" for state officials who perpetrate human rights violations, with denial of effective remedy for victims of such violations¹⁰. The UN and non-governmental organizations have also raised concerns at the erosion of and chilling effect on freedom of expression by prosecutions under excessively restrictive legislation;¹¹ acts of harassment and intimidation and the use of criminal defamation against the media, HRDs and community leaders¹².

This report concludes with a series of recommendations. It urges the NCPO to drop the veil of secrecy over the full picture of detention under Martial Law, and satisfy concerns about the safety of detainees by making public full information on the persons whom it is holding and has held under Martial Law provisions. A clear response is requested from the NCPO regarding emerging allegations of torture and ill-treatment of detainees during interrogation in detention under Martial Law. In addition to demonstrating its commitment to putting an end to secrecy in the practice of detention, the NCPO must provide redress for human rights violations and not engage in acts of reprisal or judicial harassment of those seeking remedies.

The report calls for the removal of legal penalties for the peaceful exercise of the rights to freedom of expression and peaceful assembly and the dropping of charges against persons penalized for peaceful dissent. A series of recommendations for legal reforms are also provided.

1.1 METHODOLOGY AND ACKNOWLEDGMENTS

The findings of this report are based on a visit in July 2014 to Thailand by delegates from the International Secretariat of Amnesty International to assess the human rights situation following the military coup of 22 May 2014 and desk-based research, including interviews from London. Amnesty International does not support or oppose any government or political system, nor does it support or oppose the political views of those whose rights it seeks to protect.

Delegates visited Thailand's capital, Bangkok, Chiang Mai, Udon Thani, Khon Kaen, Rayong and Chonburi provinces. During their visit, the group met with former detainees, political activists, migrant workers, community groups, representatives of the media, including print and broadcast media, (NGOs), UN officials, lawyers, the National Human Rights Commission of Thailand (NHRCT), and academics. The delegation also met with military officials, including the Deputy Chiefs of Staff of the Royal Thai Army and Air Force, police officials including the Deputy Commissioner of the Bangkok Metropolitan Police Bureau, Commanders of the Technology Crime Suppression Division and Crime Suppression Division, and officials

from Thailand's Ministry of Foreign Affairs.

When individuals have given consent, their names are included. When individuals interviewed by Amnesty International chose to remain anonymous for fear of repercussions, their name and other information which may expose their identity have been withheld.

Amnesty International extends its thanks to the NCPO, other officials and the organizations and individuals who consented to meet with the delegation and helped facilitate the mission. The NCPO was given the opportunity to provide comments on a draft of this report prior to publication, which are included as Appendix I to this report. Information has been added to the report in response to some of its comments.

2. INSTITUTIONAL AND LEGAL FRAMEWORKS

“The Head of the National Council for Peace and Order shall have the power to order, suspend or act as deemed necessary for the benefits of the reforms, the unity and reconciliation of people in the country, or to prevent, suspend or suppress any actions that will destroy the peace and order, the national security and monarchy, the country's economy or the country's governance, no matter if such actions are taking place within or outside the kingdom. Such actions are deemed completely legal and constitutional.”

Article 44 of Thailand's Interim Constitution, endorsed by King Bhumibol Adulyadej on 22 July 2014.

Since seizing power, the military has undertaken a series of measures that have altered Thailand's institutional and legal framework, removing or weakening human rights protections and centring power in the hands of the NCPO and its head – and now interim Prime Minister – General Prayuth Chan-ocha.

2.1 THAILAND'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Thailand has made significant human rights commitments through ratifying international human rights treaties and as a result is bound to respect, protect and fulfil the rights enshrined in these treaties, inter alia:¹³

- International Covenant on Civil and Political Rights (ICCPR)¹⁴, including, among others,

the right to remedy (Article 2); the prohibition of discrimination (Articles 2 and 26); the prohibition of torture and other ill-treatment or punishment (Article 7); the right to liberty and security of the person (Article 9); the right to freedom of movement (Article 12); fair trial rights (Articles 14 and 15); freedom of opinion, expression and information (Article 19); and freedom of peaceful assembly (Article 21);

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT),¹⁵ including, among others, the prohibition of torture and other ill-treatment (Articles 2 and 16); criminalization of torture (Articles 2 and 4); the duty to investigate complaints (Articles 12 and 13); and the duty to provide redress to victims (Article 14).

In a communication received by the UN on 8 July 2014,¹⁶ Thailand informed the UN Secretary General that it had invoked Article 4 of the ICCPR on 20 May 2014 to derogate from, that is suspend or restrict its treaty obligations, on the rights to movement,¹⁷ fair trial (with reference to the right of appeal),¹⁸ freedom of expression¹⁹ and peaceful assembly.²⁰ Thailand assured the UN Secretary-General that the non-derogable rights in the ICCPR “have not been affected.”²¹

Article 4 of the ICCPR provides that in a time of public emergency that threatens the life of the nation and the existence of which is officially proclaimed, state parties to the ICCPR may take measures derogating from some of their obligations under the Covenant, to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination.

As this report will show, Amnesty International’s research has found that since the imposition of martial law on 20 May 2014, restrictions on derogable rights have gone beyond those allowed under the ICCPR, while there is also evidence that non-derogable human rights have been violated.

2.2 MARTIAL LAW ACT

Thailand’s military declared nationwide Martial Law on 20 May 2014, under the powers of the Martial Law Act B.E. 2457 (1914) (MLA).²² Martial law has remained in place nationwide since then, having already been in force in Thailand’s Southern Border Provinces for nine years and in almost all border districts..It declared a curfew on 22 May 2014, which was lifted nationwide on 13 June 2014.²³

The NCPO has justified its continued use of Martial Law as necessary “to combat opponents intending to derail the work of the NCPO.”²⁴ In a meeting with the NCPO at the Royal Thai Army Headquarters on 17 July 2014, Lieutenant General Chatchalerm Chalernsukh, Deputy Chief of Staff of the Royal Thai Army, told Amnesty International that Martial Law remained necessary for “national security” and political gatherings could not be allowed as they could lead to violence.²⁵

Section 15 (ii) of the MLA allows for up to seven days’ detention without charge or trial. As

detailed in chapter 3 of this report, this provision has been widely used by the NCPO to detain people arbitrarily.²⁶

Under Section 16 of the MLA, no damages in the form of compensation or other reparation will be provided for measures taken by the military in enforcing the Act. There is jurisprudence in Thailand allowing for prosecution of members of the armed forces if they commit criminal acts when detaining a person, or engage in unlawful conduct in violation of the human rights of individuals under their control even when in the course of their duties.²⁷ However, any case filed by a civilian against military personnel is subject to the competence of military courts.

In its 2012 recommendations, the Truth for Reconciliation Commission Thailand – a commission appointed by former Prime Minister Abhisit Vejjajiva to address and report on measures for reconciliation following political violence in Thailand in 2010 – pointed to the potential for national security laws, including the MLA, to “infringe on the basic rights and freedoms of people, conflict with the principle of proportionality, and bring harm to the general public and society.”²⁸

2.3 NCPO ORDERS

The NCPO has issued over 200 orders since assuming power, some with broad and sometimes vaguely worded restrictions on human rights, including freedom of expression and peaceful assembly. Under the Interim Constitution, these orders continue to be in place and have the force of law.²⁹

Within hours of seizing power, the NCPO announced a series of edicts sacking the government, abrogating the 2007 Constitution and dissolving the Parliament. However, under NCPO Order 5/2557 (sections 4 and 5) all courts retain their powers in the trial and adjudication of cases pursuant to the law and the announcements of the NCPO. Independent organizations and other constitutional organizations established by the 2007 Constitution, including the NHRCT, National Anti-Corruption Commission and the Election Commission are also permitted to continue their duties

The NCPO has cited national security interests necessitating these edicts. The NCPO has justified the ban on gatherings, for example, saying it is necessary to ensure a climate conducive for reform to counteract those with “evil intentions who try to incite unrest”³⁰ and threatening “the toughest legal action” against “groups of protesters who do not seem to understand the current political situation.”³¹

As this report will show, regardless of the intentions of the NCPO, the lack of precision in the detailing and application of some of these edicts has resulted in human rights violations, and left people unsure of what actions may or may not fall under these new, broad restrictions. A number of these edicts are analysed further in this report.

2.4 INTERIM CONSTITUTION³²

On 22 July 2014, Thailand's King Bhumibol Adulyadej endorsed the Interim Constitution, to be in place until a permanent constitution enters into force. The Interim Constitution was drafted by an advisory team appointed by the NCPO and replaces the 2007 Constitution.

Amnesty International is concerned³³ that the Interim Constitution fails to provide for human rights protections beyond a cursory reference. It legitimizes and perpetuates human rights violations perpetrated under the military government and provides sweeping impunity for those suspected of criminal responsibility for human rights violations.

The Interim Constitution contains a single provision (Article 4) that refers, in part, to human rights:

“Upon the provisions of this Constitution, the human dignity, right, liberty and equality of the Thai people protected by the democratic tradition of Thailand with the King as Head of State and by the existing international obligations of Thailand shall be protected by this Constitution.”

In comparison, Thailand's 2007 Constitution contained over 20 detailed provisions on specific human rights – civil, political, economic, social and cultural.³⁴ The deletion of these human rights provisions and their replacement by a single, general provision significantly weakens human rights protection in Thailand, and send the wrong signal about the commitment of the interim authorities to human rights. Amnesty International calls for the immediate and full restoration of the 2007 Constitution's human rights provisions.

Article 47 of the Interim Constitution provides:

“All of the announcements and orders of the National Council for Peace and Order declared during 22 May 2014 until the date the Council of Ministers take office under this Constitution, whether legally or administratively binding, whether implemented before or after the enforcement of this Constitution, are considered to be wholly legal and constitutional. These announcements and orders shall be enforced until declared repealed or amended.”

In essence this means that, at least until further notice, the military authorities are free to continue perpetrating the human rights violations described in this report.

Article 44 of the Interim Constitution provides (in part):

“The Head of the National Council for Peace and Order shall have the power to order, suspend or act as deemed necessary for the benefits of the reforms, the unity and reconciliation of people in the country, or to prevent, suspend or suppress any actions that will destroy the peace and order, the national security and monarchy, the country's economy or the country's governance, no matter if such actions are taking place within or outside the kingdom. Such actions are deemed completely legal and constitutional.”

Amnesty International is concerned that this provision, which is neither expressly restricted by considerations such as Thailand's obligation to respect and protect human rights – not even non-derogable ones – nor subject to any judicial, parliamentary or other oversight, could be used as a basis and justification for serious human rights violations and provide impunity for perpetrators.³⁵

The Interim Constitution provides a blanket amnesty from investigation or prosecution for the NCPO and/or their agents. Under Article 48, all those undertaking acts for the NCPO, including anyone acting under their instructions, are deemed “absolutely exempted from any wrongdoing, responsibility and liabilities” even for acts deemed illegal by subsequent laws. This allows for complete impunity for human rights violations, in breach of Thailand's international human rights obligations, in particular the right to remedy provided, for instance, in Article 2(3) of the ICCPR and Article 14 of UNCAT, as well as the obligation to extradite or prosecute those suspected of criminal responsibility for torture, as provided by UNCAT. Further, placing the executive branch outside the reach of the courts increases the risk of human rights violations.

2.5 LEGISLATIVE COUNCIL AND INTERIM GOVERNMENT: THE NCPO ROADMAP TO ELECTIONS

On 30 May 2014, General Prayuth Chan-ocha announced a three-phase “Roadmap” – reconciliation, reforms and elections – “to return the country towards a fully functioning democracy”. The first phase included the drafting of the Interim Constitution. The second, current phase has included the establishment of a legislative council to select a government and the drafting of a new constitution. The third phase will apparently include elections.³⁶

The 48 Articles of the Interim Constitution lay out the framework for the country's administration and its constituent parts, comprised of a fully-appointed National Legislative Assembly (NLA) and as yet unappointed National Reform Council (NRC) and Charter Drafting Committee. It also defines the roles of other state institutions such as the Constitutional and Supreme Courts in relation to the NCPO and the NLA.

The NLA is comprised of 200 members appointed directly by the NCPO. Over 100 of the members are serving or former members of the military or police force.³⁷ No individual who has held a position in a political party within the past three years can be appointed to these bodies. The NLA acts as both the parliament and the senate, and deliberates and votes on bills, while the NRC is tasked with assessing and designing “reforms”, as well as drafting bills.

The NLA is tasked with appointing a Prime Minister, who in turn appoints a Council of Ministers, to oversee the administration of the country and the drafting of a new constitution as part of the NCPO's roadmap. There has been no mention of a national referendum or consultative process to approve the new Constitution.

Above the new institutions is the NCPO and its Head, Gen Prayuth Chan-ocha, who wields

almost absolute power. On 21 August 2014, the military-dominated NLA selected him as the country's Interim Prime Minister, further cementing power in the hands of the military, and specifically to General Prayuth Chan-ocha: concurrently the head of the army, the NCPO and the government. King Bhumibol Adulyadej endorsed his appointment as premier on 25 August.

Placing unfettered power in the hands of one man does raise concerns about accountability, particularly in light of the human rights violations detailed in this report.

The promulgation of the Interim Constitution and the appointment of the NLA are in line with the announced roadmap, with elections tentatively scheduled for October 2015. However, the Interim Constitution stipulates a range of scenarios that allow for the stated roadmap to be altered or abandoned.

3. RIGHT TO LIBERTY

“I told them I have the right to talk to lawyers and my family. And they told me to shut up. ‘You are a captive and you have no right to speak.’”

Individual detained under Martial Law, interviewed by Amnesty International, July 2014.³⁸

The right to liberty and security of person is provided in Article 9(1) of the ICCPR. “No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The Working Group on Arbitrary Detention has described detention as being arbitrary when it results from

- i) the exercise of certain rights or freedoms guaranteed in the Universal Declaration of Human Rights and ICCPR;
- ii) when the total or partial non-observance of international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character;
- iii) when asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy and
- iv) when the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights.³⁹

Since the coup, the military has engaged in systematic arbitrary arrests and detentions of hundreds of people in violation of their right to liberty and other human rights. The military has called politicians, academics, activists, journalists and others to report. Most have been detained.

The vast majority of those who have been detained have been held for up to seven days, without charge or trial; some were held incommunicado, and a number were held beyond seven days. At least two individuals were forcibly disappeared, one of whom after being detained beyond the seven days permitted under Martial Law.

On 17 July 2014, the NCPO informed Amnesty International that 471 persons had been called to report to the army, of whom 62 did not present themselves and 86 persons were charged with criminal offences.⁴⁰ On 9 September it informed Amnesty International that 411 individuals had been released, and 60 persons did not present themselves.⁴¹The OHCHR

reported in August 2014 that some 700 persons have been ordered to report and/or arrested under Martial Law powers.⁴² Unofficial figures estimate that 571 people have been officially ordered to report and some 257 individuals arrested or detained.⁴³

Amnesty International considers all administrative detention⁴⁴ -including the detention for up to seven days under the MLA, as arbitrary, therefore in violation of the right to liberty under Article 9 of the ICCPR. This arbitrariness is underlined by the fact that people were arrested on vague and flimsy grounds such as “giving them time to think”⁴⁵ or “cooling-off”,⁴⁶ that many were held incommunicado, and that none of the rights guaranteed under Article 9 of the ICCPR have been respected. These include the right to be informed at the time of arrest of the reasons for arrest, to be brought promptly before a judge or other officer authorized by law to exercise judicial power, or to request a court to decide on the lawfulness of their detention. Nor have other safeguards considered to be key to the protection of detainees been upheld, including safeguards against torture and other ill-treatment such as the right of detainees to communicate with the outside world⁴⁷, access to doctors, lawyers and relatives, as recommended by both the Human Rights Committee and the Committee against Torture,⁴⁸ and the requirement to only hold detainees in official known places of detention.⁴⁹

3.1 ARREST WITHOUT PROPER WARRANT AND ON BROAD, VAGUELY DEFINED GROUNDS

“HARSH MEDICINE” FOR WRITER THANAPOL EAWSAKAL

Thanapol Eawsakul, 41, the publisher of political journal – *Fah Diew Kan*, or “Same Sky” – was detained in a military barracks in Bangkok and Ratchaburi for eight days at the end of May 2014, then released, having been forced to sign undertakings to refrain from political activities. “*The process of going to report oneself is a political method. This is a request for cooperation. If one provides it, one can return. But if one does not cooperate with the soldiers, they say they will take ‘harsh medicine’ to take care of things.*”⁵⁰ he has written

He was later detained again on 5 July because authorities considered he had violated the terms of his release.

He told Amnesty International “I knew that the serious limits were on Article 112 [the *lèse majeste* provision in the Penal Code] so I tried to restrain myself writing about that. But for someone who works in publishing, it’s normal to write such criticisms. I just wrote something on Facebook that would normally be considered a very standard criticism, I was writing about the 80 baht lottery price, and questioning the military’s policy. I’d already restrained myself a lot. And I thought I was acting within the conditions of my release. My Facebook settings are on public.”

In early July the military invited him to talk about the limitations of what he can and cannot write. He met a military officer at a coffee-shop on 5 July and was then taken to a military barracks. A senior officer told him that he had defied the orders to not criticize the coup and they could not let him go free, as it would encourage others to do so too. They mentioned ten Facebook statuses that they did not like, and “explained to me what I could and couldn’t write. Military officers in uniform then politely explained that I had been re-detained in the interests of the stability of the coup government and the country.” Thanapol Eawsakul told Amnesty International that while waiting to go to detention a high-ranking plain clothes officer approached and swore at him, intimating that people like him never learn and should be punished. He was held for five days at the Crime Suppression Division.

He told Amnesty International that he was also threatened with up to two years in prison for violating the

conditions at the military court. “They told me that if I continued to criticize I would be charged. I signed again the identical document I signed the first time. They have a file on me. They can choose anything on me and pick it up and charge me.”

Orders to report stipulate that people must report at specific times to specific places, mostly military headquarters in Bangkok. Those failing to report were told they would be breaching military orders, would be prosecuted in military courts and liable to punishments of imprisonment of up to two years and fines.⁵¹

The orders were made initially through lists shown and read on national television, and also through orders delivered personally, often on the phone or in person and in some cases with explicit or implicit threats of violence and/or negative consequences to the person or their relatives if they failed to report.⁵² An individual reported to Amnesty International that he received a phone call from a high-ranking military officer warning him that unless he reported to local military headquarters his safety would be at risk and soldiers could use violence against him.⁵³

While there is an official public record of those summoned by NCPO orders, detentions of individuals who have not been publicly called have also been taking place since 22 May 2014. Amnesty International has received information that suggests written orders and verbal requests for people to report are now predominantly being transmitted privately.⁵⁴ In late June 2014, for example, individuals invited verbally to interviews or detention by military officers were told that they would be prosecuted in the military court if they failed to attend.⁵⁵

The military government has insisted consistently that those who were called to military headquarters and held there were not in fact detained. NCPO spokesman Colonel Werachon told journalists in a press conference: “I don’t like the word detention. Because the conditions that happen are quite different”, detailing that detainees had “air conditioning,” “good food,” and “all kinds of activities that make the time pass quickly” before asking, “Is this detention?”⁵⁶ An aide memoire by the Ministry of Foreign Affairs explained that, instead, the movements of persons held under what it referred to as “so-called ‘detention’... have been restricted in order to provide a cooling-off period”.⁵⁷ Similar claims were made by Thai officials to Amnesty International, and in the media, where authorities called the process “attitude adjustment”.⁵⁸ The authorities’ mis-categorization of these detentions as “visits” or “cooling-off periods” for “guests” may have been at the heart of their denial of key human rights to the detainees.

Under Article 9(2) of the ICCPR, detainees have the right to be informed, at the time of arrest, of the reasons for arrest. Instead, people were called, as noted, mostly through the media rather than by means of a warrant, and under military orders which do not point to any specific, suspected illegal acts on their behalf. Instead Article 15 (ii) of the Martial Law Act (1914),⁵⁹ on which the army has relied in making these detentions, provides:

“In cases where military personnel have sufficient reason to suspect any individual of being an enemy or of being in opposition to the contents of this Act or to the orders issued by military personnel, then military personnel have the authority to detain the individual for questioning or for the purposes of the military. But the individual may not

be detained in excess of 7 days.”

The fear of such detentions spreads far beyond those who were actually detained. A political activist told Amnesty International: “We were terrified that we’d be arrested and were not certain we’d be released. They didn’t disclose the whereabouts of the detention facilities, families were worried.”⁶⁰

Silencing potential critics to ensure cooperation appears to be one of the effects of these detentions, if not one of their main objectives. A significant proportion of the individuals required by the authorities to report are known social or political figures or activists, or are associated with those who are. By late June 2014, more than 90 percent of those summoned were academics, journalists and individuals associated with the red-shirt movement or former government.⁶¹ According to the accounts of interrogations by some of those detained, detainees “were told the coup was the right action and then the detainees were asked to communicate to both the military and general public that they then have already agreed with the coup as a precondition prior to their discharge,”⁶² and individuals were pressured to change political sides or attitudes.⁶³ A former detainee reported that officials had told him that anything that violated their orders was a matter of national security. Acquiescing to not speak out was effectively a factor in determining the length of an individual’s detention.

3.2 HOLDING IN UNOFFICIAL PLACES OF DETENTION

International human right law and standards require that detainees be held only in official, known places of detention – this is a key safeguard against torture, other ill-treatment and enforced disappearance. As the Human Rights Committee explained in its authoritative General Comment on Article 7 of the ICCPR (which prohibits torture and other ill-treatment):

“To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.”⁶⁴

vast majority of those detained under the MLA have been held in military facilities not designated as places of detention, though a minority were held in an official police detention centre at the Crime Suppression Division in Bangkok.

Some detainees were transferred between army bases and did not know where they were. A number of persons who were transported by military authorities were made to wear hoods or cover their eyes during the journey, to further deprive them of means to ascertain their whereabouts, while some were handcuffed.⁶⁵ One individual told Amnesty International that after being held for long hours on the first day of her arrest, waiting for what she did not know, she “couldn’t stand it anymore”. “At 8pm I was taken into a minivan, driven not far

from the base, but I had no idea where I was. I was put into a room with a small bed and a built-in toilet, then the door was locked."⁶⁶

Another reported: "I did not get to speak to anyone for five days and five nights. I felt terrible and had no idea what would happen to me next. I felt my rights were violated. I did not know why I had been detained, how long I would be held and what was happening to me."⁶⁷

3.3 INCOMMUNICADO DETENTION

The right of detainees to communicate with the outside world and to receive visits is a key safeguard against torture and other ill-treatment as well as other human rights violations. It enables people concerned about the well-being of detainees to see where they are held and learn about their condition so as to be able to intervene on their behalf if there is reason for concern. It is also a key safeguard against enforced disappearances and extrajudicial executions; once a detainee is seen by concerned people from outside, there is less risk that he or she will be "disappeared" or killed.

The NCPO has acknowledged that isolation from the outside world was part of the strategy on detention of persons required to report to authorities. NCPO Spokesman Colonel Werachon told media that detainees were barred from having any contact with the outside world in order to provide them with a "cooling-off period," stating that this was necessary for the goal of political reconciliation and returning happiness to the people. "We talk to them, we try to convince them to put the country's interests before their own... we don't want them to have information from outside. We just want them to be on their own."⁶⁸

While the Ministry of Foreign Affairs has asserted in a briefing on arbitrary arrest and detention that "all those who reported themselves were treated well and their immediate family members were given access to visit them during their stay",⁶⁹ Amnesty International is only aware of a small number of cases in which detainees were allowed to telephone their families briefly. However, for the majority of persons detained under Martial Law no contact was allowed and phones were confiscated upon arrival at the military headquarters. Those detained under the MLA have generally also been denied access to their lawyers.

A red shirt political leader, detained in late May, told Amnesty International that he was not allowed to contact anyone, use the phone, or have a lawyer visit him. A military officer told him there was no need for a lawyer to be assigned to someone who had not been charged with a criminal offence.⁷⁰

Lawyers acting on behalf of three individuals detained by the army told Amnesty International: "There were no legal avenues for defending the rights of detainees,"⁷¹ including to contact the outside world. On one occasion, having failed to establish the fate or whereabouts of several detainees, these lawyers resorted to writing directly to the NCPO requesting essential information or else release of those detainees: "We submitted the letter addressed to General Prayuth, handed through the reception at NCPO. It was publicized through the media. The NCPO later published a video of these individuals and the following morning they were released."⁷²

3.4 ENFORCED DISAPPEARANCE

Enforced disappearance is defined in Article 2 of the International Convention for the Protection of all Persons from Enforced Disappearance (CPED) as: *the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.*⁷³

Beyond being human rights violations in and of themselves, acts of enforced disappearances violate a range of other human rights, including freedom from arbitrary detention, the right to recognition as a person before the law, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.⁷⁴ Amnesty International has received information regarding at least two cases since 20 May 2014 in which the authorities refused to disclose the whereabouts of individuals held in incommunicado detention for weeks, and is concerned that these cases amounted to enforced disappearance, although the authorities have subsequently made the whereabouts of both individuals known.

Yongyuth Boondee was detained in Chiang Mai in late July 2014 by police. Until 8 August 2014, no one was able to contact him and his whereabouts were not disclosed to his family or his lawyers, who were told by authorities that he had requested to remain in custody voluntarily.⁷⁵ They did not disclose his whereabouts or grant access to him until 10 August 2014, after he was shown to media in a crime scene re-enactment.⁷⁶

Activist Kritsuda Khunasen was detained on the evening of 27 May 2014 by soldiers from the 14th Military Circle in a raid on the house of a woman who provided aid to red shirt prisoners and for whom Kritsuda acted as a secretary. She told Amnesty International that soldiers detained her and her boyfriend after they found that the woman was not at the property. She was not told why she was being taken, or under which legal provisions soldiers were taking her.⁷⁷ In an interview later with Thai Voice Media she said she heard the driver stopping at a checkpoint to a military camp, and “the driver told soldiers at the checkpoint that he was dropping off a ‘parcel.’”⁷⁸

Kritsuda Khunasen told Amnesty International that she was blindfolded for a full period of a week, and moved three times during this period to different places of detention, during which she was interrogated and tortured (see chapter 4 below).

Both Kritsuda Khunasen and Yongyuth Boondee reportedly had to sign papers stating that they were remaining in detention of their own volition.⁷⁹ Kritsuda Khunasen told Amnesty International that after a week, under duress and having been threatened that if she did not comply she would not be released, she was made to sign a paper stating that she wanted to stay longer in detention.

After she appeared not to have been released from detention within a week, authorities denied knowledge of her whereabouts, and did not provide any information about her detention.⁸⁰ Following repeated public requests for her to be produced, authorities included her name in an order for persons to report to them on 17 June,⁸¹ and then on 20 June

announced that she was being held to "meditate, restore consciousness, and reconsider many things, so that we can adjust [her] understanding".⁸² The NCPO intimated, including in a meeting with Amnesty International, that she had requested to remain in detention for her own safety.⁸³

On 24 June 2014, authorities aired footage of Kritsuda Khunasen and her boyfriend in custody stating that they had been well treated. She told Amnesty International that she was put under intense psychological pressure to make a statement in support of the coup and the military, which reportedly stage-managed the filming.⁸⁴ She told Thai Voice Media that on the evening of 23 June she and her boyfriend were told by army officers, including one of the NCPO spokespeople, what to say. During the footage, she states that she was voluntarily in military custody and was "happier than she could say."

Amnesty International has received no information about any investigations initiated by authorities into the enforced disappearance of either Kritsuda Khunasen or Yongyuth Boondee.

3.5 FORCED AND RESTRICTIVE UNDERTAKINGS AS CONDITION FOR RELEASE

The vast majority of those detained under the MLA have been forced to sign a standardized form⁸⁵ as a condition for their release. In signing the form, the detainee declares that he or she has been well treated. The form details the regiment's barracks at which the person was detained, declares that the undersigned has "read and understood" NCPO Announcement 39/2557,⁸⁶ which outlines the requirement for released detainees to strictly adhere to restrictions, or to face penalties of two years' imprisonment and/or fines of 40,000 Baht (US\$250). Those who have signed the form undertake not to travel abroad without permission from the "Head of the NCPO" and not to "participate in any political activity or meeting anywhere." Further, the undersigned "agree to be prosecuted" and have their bank accounts frozen should they breach these two conditions. Those granted bail having been arrested for breaching military orders are forced to sign similar undertakings. All former detainees who spoke to Amnesty International stated clearly that they had to sign the form as a condition for release.

One former detainee explained: "They just said: you read it and sign it. They didn't explain why. The first condition was about not going abroad without permission. I asked if this could be crossed out. The officer said: 'would you want me to call General Prayuth and ask him?' I said: 'yes of course'. The officer laughed, then he said: 'if you don't sign you stay on until you've signed it.'"⁸⁷

Requiring detainees to sign these undertakings is an act of intimidation and coercion, since these undertakings were a sine qua non condition for release from detention, which was arbitrary in the first place. This also results in violations of signatories' rights to freedom of expression, peaceful assembly and movement – human rights which Thailand is obliged to respect under Articles 19, 21 and 12 of the ICCPR, respectively. Restrictions on these rights can only be made subject to the principles of legality, necessity and proportionality.⁸⁸

Rather than taking individual measures against specific individuals, the military authorities forced the vast majority of detainees to sign identical forms imposing identical restrictions on

their human rights. This painting of hundreds of different individuals who have engaged in different activities with the same restrictive brush attests to the arbitrary, collective nature of these restrictions.

Authorities have not defined how they interpret “political activities”, which are among the activities restricted on release conditions. The Deputy Commissioner of the Bangkok Metropolitan Police, Police Major General Amnuay Nimmano, told Amnesty International that conditions will be lifted when Martial Law is no longer in place.⁸⁹ The NCPO told Amnesty International that people were able to attend weddings, parties and seminars, but did not further define what would be a violation of release conditions.⁹⁰

3.6 FURTHER ARBITRARY DETENTION AND OTHER PUNITIVE MEASURES

Sixty-two persons⁹¹ who refused to comply with the NCPO orders to report may face arrest, prosecution and terms of imprisonment on charges under the MLA⁹² of disobeying orders issued by the NCPO.

Two men, of a total of 10 so far charged for disobeying NCPO orders, are in September 2014 the first individuals on trial in a military court under these charges. Chaturon Chaisang, the Deputy Prime Minister and Education Minister under the previous government, publicly refused on principle to report, whereas Law Professor and reformist legal campaigner Worajet Pakeerut was out of the country and unwell and had requested his wife to inform the authorities.⁹³ They were both charged at Bangkok Military Court on 4 August 2014.⁹⁴

At least 11 other Thai citizens,⁹⁵ including red-shirt activists, politicians associated with the previous government and reformist academics who have failed to report on military orders to present themselves, and for whose arrest authorities consequently issued warrants, are believed to have had their passports revoked.⁹⁶

Amnesty International considers that penalising individuals in any way solely for failing to comply with orders to report to the army so that they may be subjected to arbitrary detention for the purpose of “attitude adjustment” is itself arbitrary and unjustified. Amnesty International would consider anyone imprisoned on that basis alone as a prisoner of conscience, deprived of liberty solely for exercising their human rights peacefully, and call for them to be immediately and unconditionally released and any corresponding convictions expunged or related charges dropped. Similarly, any further actions related to the failure to report, including the revoking of passports, must be reversed.

ARBITRARY DETENTION OF RELATIVES TO PUT PRESSURE ON FAMILY MEMBERS

Authorities have detained or threatened detention of family members in order to place pressure on their relatives to follow orders to report under Martial Law. Detention of relatives of a suspect who are themselves not suspected of any offence but are arrested to put pressure on a suspect is clearly arbitrary and violates the right to liberty.⁹⁷

A radio executive and disc-jockey told Amnesty International that when soldiers searched for him but could not find him: "They went to my brother-in-law's house, which they searched without warrant. I was not there either, and they said they were inviting him to go with them instead, saying, 'If we don't have him, you have to come with us'."⁹⁸

In at least one other case made known to Amnesty International further pressure was placed on a political activist, who refused to sign undertakings to cease political activities required before he was released, by taking a family member into detention and threatening to hurt them.⁹⁹

ARBITRARY DETENTION IN LIEU OF PROSECUTION FOR BREACHING MILITARY ORDERS

Arbitrary detention appears to have been used as a means of extra-legal punishment for infringements of NCPO orders. Punishment without a trial violates the presumption of innocence (provided, for instance, in Article 14(2) of the ICCPR) and fails to accord victims with any fair trial rights.

In an interview with Amnesty International, senior commanders from the Crime Suppression Division confirmed that individuals had been detained for up to seven days, under orders from the military, for breaches such as failing to report or attending gatherings of more than five people. In the words of one of the officers: "In these cases sometimes the military would have them detained for seven days – if they can reach understanding they just let them go."¹⁰⁰

NCPO spokesman Winthai Suwaree stated to the media in early June that authorities would detain persons for seven days for peacefully making a three-finger salute (a symbol of opposition to the coup, taken from the Hunger Games film) for seven days.¹⁰¹

3.7 THREATS AND INTIMIDATION FOR FAILING TO REPORT

"This is a battle, my little friends. You have two ways to go, One: fight, be broken into pieces, and destroyed. Two: since you know that we can take a friend of yours hostage, if I were you, I would stop [your political activities] and negotiate."

Message from a soldier, later identified as a Lieutenant Colonel, on the Facebook page of a student group whose members had not yet responded to military requests for them to report.¹⁰²

Student activists who had organized flash mob protests against the coup reportedly received a message on their Facebook page from a soldier, demanding they stop their activities. A day later he posted close-up photographs alleged to be of the students running away from anti-coup graffiti with the above threat.

Authorities have engaged in various acts of intimidation against both those who have disobeyed the order to report and their friends or relatives.. In one case, in a telephone call to an activist called to report, soldiers said they knew that the person's mother lived alone to persuade them to present themselves to military authorities.¹⁰³ Soldiers and police are making daily or more visits to relatives of some individuals who have refused to report,

threatening that they will continue until their relatives give themselves up to authorities.¹⁰⁴

4. TORTURE AND OTHER ILL-TREATMENT

“I was released, leaving only my physical and mental bruises which will forever remain in my heart.”

Individual who reported being tortured in June 2014.¹⁰⁵

Under international law, torture and other cruel, inhuman or degrading treatment or punishment are prohibited at all times, including during public emergency.¹⁰⁶ A single act of torture is a crime under international law. As noted above, Thailand's obligations under the ICCPR and the UNCAT include criminalizing torture, investigating complaints and providing redress to victims.

In its communication to the UN Secretary-General announcing derogations from the ICCPR, the Thai government assured the Secretary-General that the non-derogable rights in the Covenant, including Article 7 (prohibition of torture and other ill-treatment), “have not been affected.”¹⁰⁷

In May 2014, the UN Committee Against Torture, in its concluding observations on Thailand, expressed serious concerns about continuing allegations of the widespread practice of torture and ill-treatment of detainees by military, police and prison officials, and urged that immediate and effective measures were taken to investigate, prosecute and punish those with penalties consistent with the gravity of these violations. In relation to numerous reports of torture from Thailand's Southern Border Provinces, where Martial Law powers and/or a State of Emergency have been in place for nine years, it urged Thailand to assess the need for emergency legislation “bearing in mind that the conditions for declaring an emergency and enacting emergency laws are strictly and narrowly defined and should be limited to exceptional circumstances”. It requested Thailand to report back, by 23 May 2015, on its response to the Committee's recommendations for strengthening legal safeguards for detained persons; conducting prompt, impartial and effective investigations of allegation of torture by law enforcement personnel; and prosecuting suspects and sanctioning perpetrators of torture or ill-treatment.¹⁰⁸

4.1 CASES OF TORTURE OR OTHER ILL-TREATMENT

Incidents of torture and other ill-treatment have allegedly occurred despite declarations by many of those released from detention under the MLA, as well as those released on bail for breaching military orders, that they were “treated well and not hurt, forced, coerced, deceived, tortured, promised, or mistreated in any way.”¹⁰⁹ As these declarations were a condition for release, they cannot be considered reliable. As a student activist arrested for a “political activity” (eating a sandwich as a form of protest) told Amnesty International: “I got slapped and I had to sign that I wasn’t harmed.”¹¹⁰

Amnesty International has received credible reports of torture and other ill-treatment during interrogation of a number of people detained since the military took power on 22 May 2014. The reports refer to beatings, death threats, mock executions and attempted asphyxiation. Some of these acts have allegedly taken place while people have often been hooded with blindfolds secured by duct tape, with their hands tied and feet restrained for varying periods of time – including up to a week. In a number of cases, detainees have been moved between different places of detention with no contact with the outside world. Two individuals released from military detention also told Amnesty International that during their detention they came across other individuals who had injuries and bruises from beatings administered in custody.

“IN CONSTANT FEAR”; TESTIMONY BY KRITSUDA KHUNASEN

In addition to the above reports, where details of the individual cases are withheld to protect the safety of concerned individuals, Kritsuda Khunasen, whose case is outlined above, provided detailed information on her torture and ill-treatment.

She told Amnesty International that she was interrogated about her visits to political prisoners and her involvement with the red-shirt political movement: ... And if I was too slow when answering, didn’t speak, didn’t answer the question in a direct manner, or said I didn’t know, I was beaten with a fist to my face, head, stomach and body... The worst that I experienced was when they placed a plastic bag over my head, tied up the ends and put a cloth bag over my head. This knocked me unconscious and I was brought back by throwing water on me. They then put me into a body bag. At that point, I knew what I had to do to make sure I survived this and made it out alive.”¹¹¹

Kritsuda Khunasen reported that authorities had been questioning her on whether the UDD received funds from former Prime Minister Thaksin Shinawatra, which she denied. She stated that she felt she had to give her interrogators the answers that they wanted, rather than the truth, as she would be beaten when she told them the answers she believed to be correct. She told Amnesty International that she was asked extensive questions about the political prisoners she visited, and the names of people she had been helping with particular focus on prisoners charged under the *lèse majesté* law, on whom she said authorities focused and told her she was wrong to help.

She reported being held with her hands tied together and blindfolded with duct tape for around a week after she was detained under Martial Law powers. “I had no sense of day and time because the tape put onto my face blocked out all light. When showering or using the toilet, a woman soldier undressed me. When I ate, she had to feed me. On a daily basis, the military junta would come in and interrogate me.

“With my hands tied, my physical and mental freedom stripped from me, I was at the lowest point I had ever

been in my life. Hearing footsteps coming towards me made me physically shiver out of fear. I was scared and wondered what kind of beating I would get from the military junta that day. I lost 9 kilograms because I couldn't eat. I couldn't eat out of the fear that once I was done with my meal, I would be interrogated and beaten to the point where I would have to vomit everything I had just eaten in the interrogation room. I didn't know when my blindfold would be taken off and what I would have to face day in, day out. This went on for days. The military told me to not even think about trying to take my blindfolds off to look at their faces otherwise my life would be over. I finally knew what it felt like to be in constant fear of death."¹¹²

4.2 GOVERNMENT RESPONSE

On 3 August 2014, when Kritsuda's interview regarding alleged torture was released ON YouTube, authorities summarily discounted her account of, asserting that she was not mistreated.¹¹³ Access to the interview on YouTube was blocked in Thailand, as were two news stories about her treatment on the Prachatai website. Police reported that they would be carrying out an investigation into whether the interview broke any laws. Authorities stated that her reports of torture were based on her fear for her own safety for having provided them with information¹¹⁴ and two days later declared: "It is 100 per cent fabricated... We checked with the officials, and no such incidents took place."¹¹⁵The NHRCT held a meeting to look into this case, in which NCPO representatives denied any allegations of torture. However, the NHRCT did not reach such a conclusion and has not conducted an investigation into the case.¹¹⁶

Amnesty International is concerned that, to the organization's knowledge, not only did the authorities fail to exercise their duty, under the unCAT and the ICCPR, to launch a prompt, impartial, independent and efficient investigation into the complaint, they suppressed reports on the case, in violation of the right to freedom of expression, including the right to receive information about alleged human rights violations.

5. FREEDOM OF EXPRESSION

“All that we can say right now is that we’re happy; that’s all we’re allowed to say!”

Student activist, in interview with Amnesty International July 2014.¹¹⁷

The right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds. Under Article 19 of the ICCPR, no restrictions may be placed on this right other than those provided by law and are necessary for respect of the rights or reputations of others; for the protection of national security or of public order, or of public health or morals.

The Human Rights Committee has explained that all restrictions “must conform to the strict tests of necessity and proportionality” and clarified that “[t]he penalization of a media outlet, publishers or journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression”.¹¹⁸

At 11am on 29 June 2014, five soldiers in Thailand’s northern Chiang Mai province made a fried squid vendor take off his t-shirt, which they confiscated. Soldiers stated that the shirt, which was red and screen-printed with the face of a UDD political leader, promoted division, and subsequently repeatedly visited the seller on a number of occasions.¹¹⁹ On 9 July, soldiers from a different unit visited the vendor to remove a Pheu Thai party sticker from his icebox, and photographed the shop and its customers.¹²⁰ Martial Law powers have allowed many other such acts of arbitrary restrictions on freedom of expression.

The NCPO, reporting its evaluation of its achievements in reconciliation in August 2014, stated that it had organized 92,432 [sic] “dialogues between people of differing opinions and colors... for them to reconcile and join hands in resolving problems together” and that “more than 177 mutual agreements were settled among politicians, leaders of different factors, and rivals in conflicts.”¹²¹ The NCPO stated that the majority of persons were happy to “sacrifice freedom of expression to support attempts to restore national peace, and that only a minority were not ready to do so,”¹²² and that it seeks to deter communication that could cause more conflict by “distorted and provocative messages.”¹²³ It perceives the difficulty in regulating telecommunications as a potential threat to national security and warns that “unverified” information through these channels must not be shared to avoid “incitement.”¹²⁴

The NCPO has taken wide-ranging measures to restrict freedom of expression, including closing of media outlets such as television and radio stations, newspapers and websites, detentions, prosecution, censorship and the enactment and implementation of new prohibitions under law.

It has formally derogated from obligations under Article 19 of the ICCPR. Under Article 4 of the ICCPR, in times of emergency only measures derogating from the Covenant's provisions that are "strictly required by the exigencies of the situation" are allowed. The Human Rights Committee has explained that: "...the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers. Moreover, the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation."¹²⁵ The Committee also emphasised that "Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature."¹²⁶

Amnesty International believes that restrictions imposed on the right to freedom of expression fail to meet these requirements. Measures curbing this freedom are far too arbitrary and sweeping, both in scope and in substance, to be considered proportional or exceptional. Moreover, with many of these measures still in place and implemented over three months after they were imposed, they can no longer be considered "temporary" either.

Amnesty International supports the view of the Human Rights Committee that Article 19(1) (right to hold opinions) should not be subject to derogations¹²⁷ and that similarly the restrictions in Articles 12 and 21 are sufficient, so there is no justification for derogations from these provisions even in times of emergency.¹²⁸

5.1: MEDIA CENSORSHIP: NCPO ANNOUNCEMENTS 14/2557¹²⁹; 17/2557¹³⁰; 18/2557¹³¹; 32/2557¹³²; 97/2557¹³³; 103/2557¹³⁴

“ Now that the NCPO had seized all powers, you couldn’t criticize or attack it, because doing so meant causing disharmony in the society, but I had appeared in media and openly criticized ... an offence which was unacceptable ... ” NGO worker reporting on discussion with military officer, southern Thailand¹³⁵

Censorship of the media, already a concern prior to the coup, has been stepped up, with hundreds more websites taken down or blocked, censorship panels set up and people threatened with arrest and imprisonment for posting information critical of the NCPO through social media and the Internet. The NCPO has issued orders with blanket restrictions on all forms of media, internet service providers, and social media on disseminating a range of information, including anything critical of military authorities. It has justified these restrictions on the media and its censorship of "distorted information" on the basis of the need to avoid public misunderstanding.¹³⁶ On 22 May the NCPO ordered television and radio stations off the air and gradually allowed a number to begin broadcasting again, in some cases involving conditions including political content.¹³⁷

Order 14/2557 specifically prohibited media, on threat of prosecution or shutdown, from

inviting “individuals or groups not currently holding official positions, both from the government and academic sectors, as well as former judges, those who worked in the judicial system and independent organizations, to give interviews or to express their opinions” on the basis that it might lead to unrest or cause confusion.

INTERNET

On the 21 May, the army formed a joint committee made up of civil servants from the Ministry for Information and Computer Technology, (MICT), the National Broadcasting and Telecommunications Commission (NBTC) and the NPOMC to coordinate controls on the Internet,¹³⁸ and under NCPO Order 17/2557¹³⁹ required all Internet Service Providers to report to it and requested their cooperation in monitoring and reporting on behaviour that would create “disharmony.”

Thailand is among the top 15 global markets for Facebook usage and has a high percentage of social media uptake among its web-users.¹⁴⁰ The NCPO has characterised “websites, Facebook, and other online applications as potentially “harmful to the younger generation.”¹⁴¹ In late June 2014, the NCPO formed a panel to monitor and report on any information in social media “deemed detrimental to the NCPO and the royal institution” as part of an initiative to monitor television, radio, print and international media.¹⁴²

MICT reported one week after the coup that it had blocked some 219 websites.¹⁴³ Websites have been shut down for arbitrary reasons, merely for real or perceived opposition to the military government – including, in one case, on the basis of their publication of academic analysis.¹⁴⁴ Amnesty International is not aware of any right to appeal decisions to block or take down websites.

RADIO

Authorities ordered all community radio stations and radio stations with probationary licences off the air immediately after the coup.¹⁴⁵ In an amended regulation issued on 21 July 2014, media organizations currently face the threat of sanction¹⁴⁶ for publishing or broadcasting information deemed by the NCPO to be “distorted” or likely to cause “public misunderstanding”, as well as “malicious criticisms” or “false information” to discredit the NCPO and the reform process.

Authorities have used powers of search without warrant, granted under the MLA, to carry out raids on at least 99 community radio stations.¹⁴⁷ For example, soldiers in Chiang Mai forced entry into one such station on 22 May 2014, removing and confiscating equipment with no form of notification to the station owner.¹⁴⁸

Since the ban on radio stations was enforced, a number have been allowed to reopen, although the cost of re-registering with the NTBC is believed to be prohibitive, and it is believed that community radio operators may have to sign memoranda of understanding that may restrict freedom of expression.¹⁴⁹

Community radio stations serve a variety of purposes, from providing a source of commercial revenue, to political or social mobilization, and as fora for religious information and information exchange in migrant workers’ native languages. Authorities have broadly characterised a number of those stations it has not allowed to reopen as being “pirate

stations without licenses... some even jammed the frequencies of air traffic control.”¹⁵⁰

5.2 RESTRICTIONS IN SCHOOLS AND UNIVERSITIES AND REQUESTS FOR INDIVIDUALS TO REPORT ON ONE ANOTHER

“I feel very sad this is even happening in the university. I didn’t expect that.”

Academic in interview with Amnesty International, July 2014. ¹⁵¹

The authorities’ attempts to encourage citizens to report on, monitor and control peaceful dissent further restricts freedom of expression.

During May and June 2014, the army and Education Ministry told academics through oral and written instructions – in the form of an internal order – to monitor student activities that criticized the NCPO and to forbid and control student engagement in political activities.¹⁵² The police and the Permanent Secretary of the Prime Minister’s Office sent separate messages to the general public through traditional media and Facebook calling on people to report to them on civil servants and members of the public engaging in “anti-coup activities” or expressing ideas that are “unconstructive and threatening security.”¹⁵³ In the police’s case, a financial reward was offered.¹⁵⁴

According to Amnesty International’s sources, the Office of the Higher Education Commission¹⁵⁵ sent an internal order to all universities instructing them to monitor student activities that display “behaviours against the NCPO”, and to “create understanding among students about the NCPO’s intention and policies.”¹⁵⁶ Immediately after the coup, senior academic staff at universities in Chiang Mai, Mahasarakham, Ubon Ratchathani, and Phitsanulok provinces were called to meet with military officials and instructed to monitor and forbid any political activities creating “division” and “disrespect of law.”¹⁵⁷ Nationwide, university professors and rectors have been “visited” by armed troops and instructed to ensure that no political activities take place in their universities.¹⁵⁸

Similarly in early June 2014, Thailand’s Office of Basic Education Commission, under the Ministry of Education, issued rules for staff in primary schools. Amnesty International has not seen a copy of these rules, but understands from media reports that teachers are prohibited from political activism including protests, demonstrations or political seminars, and have been instructed not to disseminate “provocative” or “false” information that could encourage schoolchildren to oppose the NCPO or the laws of Thailand.¹⁵⁹

5.3 EXISTING ABUSIVE LAWS: COMPUTER CRIMES ACT, PENAL CODE SECTIONS 112¹⁶⁰ AND 116¹⁶¹

“What we fear most is not to be called to meet with the military but to be charged under the lèse majesté law. This law is used as a tool to get rid of our human dignity. When you are charged under it you are already silent and have to sit and count the years away.”

Political activist interviewed by Amnesty International, July 2014.

Over the last nine years, restrictions have increasingly been imposed on the right to freedom of expression through the passing of laws that restrict this right in a manner incompatible

with the ICCPR and the enforcement of pre-existing legislation. The 2005 Emergency Decree¹⁶², I, 2007 Computer Crimes Act (CCA) and Article 112 of the Penal Code – Thailand's 'lèse majesté' law – have been used to shut down television and radio stations, block thousands of websites,¹⁶³ imprison individuals for posting public information on websites and hold intermediaries responsible for content posted by web users. Journalists and migrant rights activists have charges pending against them under the CCA – including for reporting on human rights violations. The NCPO is currently engaged in prosecutions under these provisions that may result in imprisoning persons arbitrarily, through trials in military courts, solely on the basis of their peaceful exercise of the right to freedom of expression.

LÈSE MAJESTÉ

“Addressing 112 charges is a public office. A police officer must act whether there is a request or not – otherwise the police officer will be violating the law himself. These cases must be brought to a military court because of national security. Once Martial Law comes to an end, 112 will go to ordinary court.”

Bangkok Metropolitan Police Deputy Commissioner Amnuay Nimmano, speaking to Amnesty International in July 2014.

Under Article 112 of the Penal Code, whoever “defames, insults or threatens,” the King, the Queen, the Heir apparent or the Regent,” is liable to be punished with imprisonment of a minimum three years and maximum fifteen years. Anyone may make complaints.

Since the NCPO took power, an unprecedented number of people have been charged with lèse majesté offences under Article 112 of the Penal Code, with 14 charges or prosecutions initiated since the coup. Individuals who have been prominently commenting on the need for reform of Article 112, commentators on the law and previous lèse majesté prisoners appear to have been targeted in lists of people the NCPO required to report to them.

On 17 July 2014, the Bangkok Metropolitan Police Deputy Commissioner Amnuay Nimmano informed Amnesty International that there were 23 lèse majesté cases during 2013-14, with eight associated with crimes under the CCA. He did not specify if the cases were initiated or pending during this period. In May 2014, seven persons were serving prison sentences on lèse majesté related charges. Thailand is believed to have the highest known number of persons charged and sentenced with lèse majesté offences.¹⁶⁴ Amnesty International has campaigned for the release of editor Somyot Prueksakasemsuk and former lottery ticket vendor Ekachai Hongkangwan, who the organization considers to be prisoners of conscience. Among those charged or arrested after 22 May 2014 are a social activist and a student arrested in August 2014 for directing or acting in a play staged in October 2013 about a fictitious monarchy.¹⁶⁵ Others include a market food vendor, charged on 22 May 2014 for throwing a flag in a river in 2010;¹⁶⁶ and an engineering student charged in June on the basis of his Facebook posts after being reported by one of his Facebook friends.¹⁶⁷ Individuals are also believed to have been arrested on the basis of evidence taken from their computers and phones removed from them after they were summoned to report under Martial Law powers.¹⁶⁸

Since 22 May, at least four persons have been convicted and sentenced for offences under

Article 112, and more convictions are expected. On 15 July, the civilian appeal court in Chiang Mai sentenced a man known as Assawin to five years' imprisonment, reversing a not-guilty verdict handed down by the Court of first instance on the basis of a lack of evidence.¹⁶⁹ A woman with whom he had a business dispute, who did not give him land deeds after selling him a resort, alleged he had committed lèse majesté because he told her of his plans to develop a pond area in the resort¹⁷⁰ for the King, that he was friends with the King and that the resort was as beautiful as the King's palace. On 31 July, musician Plutnarin Thanaboriboonsuk was sentenced to 30 years' imprisonment by Ubon Ratchathani Court, reduced to 15 years after he pleaded guilty, for writing Facebook posts about the monarchy. He was reported to have been suffering from mental health problems.¹⁷¹ On 14 August, a taxi driver was sentenced to two and a half years' imprisonment for expressing views in a political discussion with one of his passengers. He was arrested in June after the passenger, a university lecturer who recorded their conversation on his mobile phone, filed a lèse majesté complaint against him.¹⁷²

In his weekly addresses to the nation on television, General Prayuth has underlined the priority the law has for his administration, warning: "Whoever commits the offence of Section 112 has to face the consequences."¹⁷³ In 2013 the Thai Constitutional Court, upholding the constitutionality of Article 112, noted its purpose was to "control the behaviour of individuals in society, protect safety, and safeguard public peace for members of society, including strengthening the security in society."¹⁷⁴

Lèse majesté pre-trial detainees and prisoners¹⁷⁵ are regularly denied bail, in what appears to be a discriminatory and punitive measure. The practice of denying bail appears to have begun following the 2006 military coup, and to have also been discriminatorily applied against red-shirt supporters and UDD members.¹⁷⁶ An individual facing charges told Amnesty International that prior to the 2006 coup, lèse majesté was not used to "harass," and that bail had not been routinely denied.¹⁷⁷ According to available information, all but two persons detained under lèse majesté charges since 22 May have been denied bail,¹⁷⁸ contrary to ICCPR prescriptions that it be the general rule that the accused should not be detained in custody before trial. Under Thai law, persons charged or convicted of offences may be released on bail subject to the final confirmation of their sentence by a court (section 107, Criminal Procedure Code). The reason habitually given by authorities for denying bail to lèse majesté detainees is authorities' evaluation that the seriousness of their offence increases the risk of escape, or of tampering with evidence.¹⁷⁹

Under NCPO Order 38/2557, lèse majesté suspects charged after 25 May 2014 face trials in military courts, with no right of appeal. The right to a public hearing, one of the safeguards of the fairness and independence of the judicial process, is also not always granted to lèse majesté detainees. Trials under Article 112 have taken place on camera¹⁸⁰ or in secrecy..

Lèse majesté prisoners report having suffered abuse – including beatings - from prison guards and other prisoners.¹⁸¹ Advocates for the reform of the law and critics of its application have been attacked,¹⁸² and subjected to threats of violence and intimidation by private citizens¹⁸³.

The Commander of the Technology Crime Suppression Division of the Royal Thai Police told Amnesty International that when assessing reports of lèse majesté, they do not classify any criticism of the monarchy as an offence, but examine whether or not the act could constitute

defamation or libel.¹⁸⁴ He further added that the Division uses a language expert to look at the wording of statements, because they do not have an exact definition of defamation or libel. The uncertainty about the exact nature of what the lèse majesté law prohibits makes the law open to misinterpretation and further abuse. The provision in Article 112 for others to file complaints on behalf of the King and his family provides opportunities for the law to be misused for personal or political purposes and has also led to vigilante style policing of freedom of expression. An activist described the law to Amnesty International as “a convenient way to attack your opponents.”¹⁸⁵

There are no public guidelines on what constitutes an offence and the King and his Privy Council have no legal role in granting permission for complaints to be filed on their behalf. The law has been used to sentence at least one individual for offences not articulated in the law, such as writing about a previous monarch.¹⁸⁶

SEDITION – ARTICLE 116 OF THE PENAL CODE

The 2007 Computer Crimes Act (CCA)¹⁸⁷ allows terms of up to five years’ imprisonment for the online publication by both internet users and Internet Service Providers of information or content that is false, that may endanger individuals, the public, or national security, and for using proxy servers to access restricted material. It allows for the suppression of web content and to block websites. It has frequently been used to further penalize acts of lèse majesté committed online.

In June 2014, Police Major General Amnuay Nimmano, Deputy Commissioner of the Bangkok Metropolitan Police, threatened to track down and arrest people for sedition under Article 116 (2) of the Penal Code for posting or sharing “anti-coup” messages on social media.¹⁸⁸

Former Education Minister Chaturon Chaisang and social activist Sombat Boongamanong, who publicly refused in Facebook posts to obey authorities’ requests to report, were charged in May and June under Article 116 (2) with making public statements “to raise unrest and disaffection... in a manner likely to cause disturbance in the country.”

Both had made statements peacefully opposing orders for them to report. Sombat Boongamanong called on authorities in a Facebook post to “catch me if you can¹⁸⁹” and wrote posts urging people to demonstrate at a “mask party to celebrate the coup,” urging “there is no need to be aggressive in opposing the coup. Smile, please, and take it easy... The masks you wear... will be enough to make the dictators in the military lose face... The goal is to tell the world what we think about the coup.”¹⁹⁰ He also called for people to do the Hunger Games salute, raising “three fingers, three times a day in public places with no police or military presence”, stating “raising three fingers has become a symbol in calling for fundamental political rights.”¹⁹¹

COMPUTER CRIMES ACT

Chaturon Chaisang and Sombat Boongamanong have been further charged with offences under Article 14(3) of the CCA, which provides for a penalty of up to five years, a fine of not more than one hundred thousand baht (USD 3,130), or both, for using a computer to commit security offences already deemed a crime under Thai law. Chaturon Chaisang told media that

he was informed that he would face these charges because a statement he gave at the Foreign Correspondents Club of Thailand (FCCT) - saying that he did not wish to go into hiding or leave the country, and was ready for authorities to detain him- was posted by someone on his Facebook page. During the speech he reportedly stated “I still insist on exercising my own rights and liberty to call for the return to democracy”.¹⁹²

Both now face penalties of up to fourteen¹⁹³ years for their statements, and Sombat Boongamanong a further sentence in relation to charges filed against him for allegedly changing a picture of the King and Queen – which he has denied.¹⁹⁴

While officials have long made threats that they will use the Penal Code and/or the CCA for “liking” or forwarding posts on Facebook and other media, Amnesty International is not aware of any charges having been laid so far. The previous head of the Royal Thai Police’s Technology Crime Suppression Division stated in 2013 that by “liking” a post officials deemed against national security, a computer user was increasing the credibility of the message and charges could be applied against them under the CCA and the Penal Code. In relation to police questioning people over these matters, he said calling people in on these matters was as a “preventive measure” designed for psychological impact, with the aim of “social peace,” adding “others may use the principle of law but we use the principle of political science.”¹⁹⁵

Prosecution or detention of individuals on the basis of privately shared peaceful comments and messages shared on Facebook and other social media have restricted the legitimate enjoyment of the right to freedom of expression.¹⁹⁶ In relation to the criticism of public figures, the Human Rights Committee has stated that acts of criticism or expression considered to be injuring to a public figure should not be sufficient to justify the imposition of penalties, and that all public figures are legitimately subject to criticism and political opposition. It has held that acts such as “lese majesty... disrespect for authority... disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials... and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.”¹⁹⁷

5.4 HUMAN RIGHTS DEFENDERS

As a State party to the ICCPR, Thailand is legally obliged to protect human rights defenders (HRDs) from harassment, reprisals and other attacks.¹⁹⁸ This obligation is not limited to protecting defenders from attacks by government officials; rather, it also extends to attacks by non-State actors.¹⁹⁹ This is reaffirmed in the UN Declaration on Human Rights Defenders.²⁰⁰

Current restrictions on the peaceful expression other human rights have had serious implications on the work of HRDs, and by extension, increase the vulnerability of marginalized groups to human rights abuses and violations.

Before the coup, individuals acting to protect their own or others’ rights faced attacks. In

April 2014, for example, environmental activist Pholachi Rakchongcharoen, aka Billy, went missing. He is believed to have been subjected to an enforced disappearance by officials angered at his involvement in a lawsuit against Kaengkrachan National Park.²⁰¹ In another case a community rights group in Loei Province²⁰² was subjected to a violent attack in May 2014 and feared assassination plots against its leaders.²⁰³

Criminal defamation charges and prosecutions initiated before the coup against journalists and human rights activists are continuing. Two were filed by the Royal Thai Armed Forces.

Pornpen Khongkachonkiet, a board member of Amnesty International's Section in Thailand and the director of a non-governmental organization that monitors and documents allegations of torture and other human rights violations, was summoned in August 2014 after the Royal Thai Army made public its complaint against her on 20 May 2014. She and her organization stand accused of damaging the reputation of the Royal Thai Army, intentionally distorting the truth and spreading false statements to the public because they requested a criminal investigation into allegations of torture in an open letter.

Editors at Phuketwan, a Thai news website, face trial in March 2015 under charges filed against them by the Royal Thai Navy.²⁰⁴ They stand accused of violating the CCA as well as criminal defamation for reproducing portions of a Pulitzer Prize-winning article written by the Reuters news agency concerning the alleged smuggling and trafficking of Rohingya, who face systemic discrimination and violence in Myanmar. Migrant rights activist Andy Hall is to stand trial in September 2014 on three charges of criminal defamation filed by the Natural Fruit Company, and two charges under the CCA on the basis of an investigative report alleging serious labour rights violations at the company's factory in Prachaub Kirikhan province. He is also facing civil damages of 400 million baht (US\$13 million).²⁰⁵

The current restrictions under Martial Law remove fora for debate and discussion that allow people to communicate with one another, raise their concerns with or place pressure on authorities. Grassroots activists lobbying for their community's rights, and trade unions, who reportedly have been instructed that they are not allowed to strike,²⁰⁶ have expressed concern that in the absence of normal avenues for raising concerns and placing pressure on authorities, which are not allowed under Martial Law, the persons they represent may be more vulnerable to exploitation and abuse.²⁰⁷ Many HRDs are facing difficulties under the current legal and administrative framework, where rights to freedom of expression and related rights used to document and publicize alleged abuses and protect against rights violations have been restricted.

In a recent example, military officials instructed Thai Lawyers for Human Rights²⁰⁸ to cancel an event scheduled for 2 September 2014, to launch a report on access to justice in Thailand following the coup. The Commander of the 1st Tank Battalion, King's Guard telephoned organizers, including Amnesty International's section in Thailand, orally informing them that should they proceed they would face prosecution for infringement of Announcement 7/2557, prohibiting political assemblies (see Chapter 6 of this report). They also wrote a letter to organizers informing them that in order to ensure compliance with NCPO policy and in their capacity as a unit "in charge of maintaining peace and order" they sought organizers' "cooperation" to cancel the event²⁰⁹.

HUMAN RIGHTS DEFENDERS IN BURIRAM PROVINCE

HRDs working to defend a community from forced evictions by the military in Buriram Province told Amnesty International that they have struggled to carry out their work in the face of threats and intimidation and that villagers could no longer protest.

“Under a democratic government they are freely able to rally and voice their demands but under a military regime they are subject to harassment so there is more fear to stand up and make our voices heard,” a leader of the Assembly of the Poor, a local non-governmental organization that works to support communities affected by development projects and land rights issues, told Amnesty International.²¹⁰

“Under a normal government we would be able to rally or call for negotiations with the government, which we are trying to do now, but we don’t know the consequences of those actions,” one villager told Amnesty International.²¹¹

Other HRDs have also faced intimidation and arbitrary detention in their efforts to document alleged human rights violations in Buriram, including local community leaders who were among ten villagers arbitrarily detained in late June 2014. On 17 July, soldiers arrested Assembly of the Poor activist Prom Jarana. He was taken from his home in Phakam district of Buriram Province and detained at a military camp for more than 10 hours before being released without charge. The arrest came five days after local activist Paiboon Soisot was detained by soldiers and ordered to leave the area or face legal action.²¹²

6. RIGHT TO PEACEFUL ASSEMBLY

“You are here because we want to correct your attitude because what is happening is detrimental to national security. It is detrimental to national security because you have been holding public activities which are critical.”

Statement made by interrogating officer to person ordered to report to NCPO, June 2014, from account given in interview with Amnesty International, July 2014.²¹³

The right to freedom of peaceful assembly is provided in Article 22 of the ICCPR, and is subject to the same narrow restrictions as Article 19 (see above). It only protects assemblies that are peaceful, meaning those that are not violent and where the participants have peaceful intentions. The Special Rapporteur on the rights to freedom of peaceful assembly and of association (SR on FPAA) has stated that peaceful intentions should be presumed.²¹⁴ Thailand is obliged to ensure that the right is respected without distinction of any kind, including race, religion, political opinion, or other status. The SR on FPAA has emphasized that in addition to the obligation not to arbitrarily interfere with or restrict the right to freedom of peaceful assembly, there is also a *positive* obligation to facilitate the exercise of this right.

On 22 June 2014 at Siam Paragon mall in the Pathumwan District of Bangkok, at least eight students gathered in preparation for a public show of defiance against the coup and new laws restricting the rights to freedom of expression and peaceful assembly. The students planned to eat sandwiches and read books as a form of protest but the military and police arrested and detained eight of them before they could hold their demonstration. Some of the students involved told Amnesty International that they were ordered to report for negotiations with the military before the protest could take place and were taken to a military facility for questioning.

Most of those who managed to get to the mall were dragged away by plain-clothes police officers.²¹⁵ One of the students managed to press ahead with the planned protest. He sat in front of the Siam Paragon mall, eating a sandwich and reading a copy of George Orwell's 'Nineteen Eighty-Four'. Like the others, he was arrested and detained by plain-clothes police officers.²¹⁶

A repressive and sometimes heavy-handed response by the authorities to small and peaceful gatherings designed to show dissent has become a hallmark of the new military government.

Other assemblies that have fallen foul of this new level of intolerance include small anti-coup gatherings, including seven persons arrested for staging a peaceful protest at a McDonald's restaurant in Chiang Rai Province²¹⁷ and students and activists coming together and raising a three-fingered salute from the Hunger Games film as a form of protest.²¹⁸

In August 2014, Amnesty International's Section in Thailand was prevented by Thai authorities on two occasions from carrying out planned activities calling for peace in Gaza. In Bangkok on 10 August, the activity was interrupted and called off after police told Amnesty International Thailand staff and volunteers that they were breaching martial law. In Chiang Mai on 17 August, Amnesty International was asked to call off the planned gathering and seminar by military officers on the basis that it violated NCPO Order 7/2557.

Under Order 7/2557, security forces have sought to prevent a number of peaceful assemblies and arrested dozens of people deemed to have violated the order. More than 70 have been formally charged, at least nine sentenced and many more face trials by military courts.

6.1 ORDER 7/2557: PROHIBITION OF "POLITICAL" ASSEMBLIES

Order 7/2557²¹⁹ on "Prohibiting of Political Assembling" prohibits the "political gathering or assembly of more than five persons" and allows for one year's imprisonment and/or a fine not exceeding 20,000 baht (US\$625) for those who breach it. The order expressly provides that its purpose is "to ensure a prompt return to normalcy of the situation" and that "[t]hose currently participating in the protests shall return to their home town immediately."

The order severely restricts the right to freedom of peaceful assembly by limiting assemblies to no more than five persons and imposes a criminal sanction for those who breach the order. It uses vague language: for instance, it does not define what might constitute a gathering or assembly – whether that assembly has to have been pre-organized by all those taking part, or whether it also extends to impromptu gatherings. Further, the word "political" is not defined.

In a meeting with Amnesty International on 17 July 2014, Bangkok Metropolitan Police Deputy Commissioner Police Major General Amnuay Nimmano said that under the NCPO's orders, police considered any act deemed to be either in defiance of the NCPO's orders or aimed at obstructing them a criminal offence. He said: "We consider that any intention of a person to obstruct the public peace and orders of the NCPO... must be considered to be activities that are criminal."

Amnesty International has been informed of one case²²⁰ where just four persons had gathered to protest against the coup. Police detained them nevertheless under NCPO Order 7/2557, reasoning that bystanders observing the protest counted as part of the gathering, thereby bringing the number of participants to above five and violating the Order.

In numerous instances, people have been arrested for staging lone protests, suggesting a zero-tolerance policy from the NCPO regarding expressions of dissent, regardless of whether it defies the official ban on gatherings of more than five persons. For example, on 1 June 2014 an elderly woman was arrested by plainclothes police officers after she stood outside a mall in central Bangkok wearing a mask with the word 'people' written across it.²²¹ In a meeting

with the NCPO at Royal Thai Army Headquarters on 17 July, Lieutenant General Chatchalerm Chalermsook, Deputy Chief of Staff of the Royal Thai Army, told Amnesty International that Martial Law remained necessary for “national security” and “political” gatherings could not be allowed as they could lead to violence.

He said that the military leadership said it was aware of Thailand’s international human rights obligations but that it also had obligations to maintain national security. Protests had to be temporarily outlawed in order to prevent the possibility of rival protests resuming and a return to the violence seen prior to the coup, he said. “Martial law will be lifted when circumstances allow. Okay, a protest might be peaceful, but one group opposes another and comes along, and then it becomes difficult to control,” he told Amnesty International.

When asked to offer a clear definition of the factors assessed when determining what constituted a “political” gathering, Bangkok Metropolitan Deputy Police Commissioner Pol Maj Gen Amnuay Nimmano told Amnesty International: “We consider the intention of the person to obstruct the public peace and orders of the NCPO or activities which support violence must be considered to be activities that are criminal. If they are not involved in supporting violence or getting others to support it, then it won’t be a crime.”

6.2 PEACEFUL ASSEMBLIES DISPERSED

While there are some notable exceptions where protests have been allowed to proceed, causing further confusion as to the exact meaning of Order 7/2557 – including protests in support of the death penalty²²² - the order has been used as a basis for the security forces to prevent or break up a number of protests.

Where assemblies have gone ahead, the security forces have been quick to crack down – sometimes resulting in arrests for acts which do not violate Order 7/2557, such as wearing t-shirts with slogans, or reading books about authoritarian systems of government.

On 1 June 2014, hundreds of police and soldiers were deployed in central Bangkok to prevent potential anti-coup protests. At least four people were arrested and other protesters forced to disperse. Scores of protesters had gathered outside the Terminal 21 shopping mall and were faced with a large security presence. At least three individuals were dragged away by plain-clothes officers. One was shoved into a taxi. The protesters soon dispersed.

In another similar show of military and police force, a small group of students were faced with hundreds of police and soldiers when they tried to hold an anti-coup event at Kasetsart University in Bangkok on 6 June.

“UPSET, WORRIED AND KIND OF PANICKED” – STUDENTS INTIMIDATED

In the course of its research, Amnesty International met with student activists who had been arranging anti-coup activities after the 22 May military takeover. All of them been harassed by the military for their activities, including being detained and threatened with criminal prosecutions.

“On 6 June, we planned to hold a picnic and screen the Hunger Games movie, as well as reading poetry at the university campus. But when we arrived there were at least 350 police officers and 150 military officers and I’m not sure how many plain-clothes officers surrounding the university campus area and we also saw a lot of

police and military vehicles and a police detention van,” one of the students told Amnesty International.

“We ate our sandwiches in the evening, but we couldn’t do anything else. We were followed. The police tried to close us off but the media were there. We were still followed by plain-clothes officers and lots of people talking on walkie-talkies.

“After that we received phone calls from the military asking us to report to them and telling us not to organize the activities. ‘You can do it but at your own risk’ they told us.”

The students were detained by the military and told to cease their activities. Before being released, some of them were made to sign release forms limiting their rights (as described in chapter 3.5).

“I’m upset, worried, and kind of panicked. We don’t have any security or safety in our daily lives anymore: we could be taken and arrested at any time. I’m worried about the people close to me and my family, and that they’ll be affected by our actions. There are no laws that can protect us, we can’t do what we want to do or say what we want to say,” one student told Amnesty International.²²³

The prohibition of political gatherings and restrictions on the right to freedom of expression and peaceful assembly, the dispersal of peaceful protesters by Thai security forces under the threat of arrest, and the detention and criminal prosecution of demonstrators have all been explained by the necessities of national security. But while under the ICCPR, a government may indeed, in certain circumstances, justify restrictions of certain human rights, including the right to freedom of peaceful assembly, “national security” is not a self-justifying reason for any restrictions of this right. The Human Rights Committee has explained that invoking this or similar justifications needs to be backed up by “information as to how, in practice,” a peaceful assembly “would violate the interests of national security or public safety, public order” etc.²²⁴ Since explanations for the harsh restrictions on the right to freedom of peaceful assembly from the military generals have been vague, general and unconvincing, Amnesty International believes that this right too has been violated by the military government.

The picture emerging is one of Order 7/2557 restricting, indeed stifling the right to peaceful assembly, being implemented harshly, so as to even deny youths the peaceful expression of harmless, humorous forms of dissent, with the authorities even going even beyond the order’s own numerical limits to ban “assemblies” of a single person. It appears that the government may, most of all, trying to serve its own perceived interest rather than any genuine security concerns by prohibiting dissent and criticism in a manner common to repressive regimes worldwide, which also commonly use “national security” as an excuse for such repression. It is one thing to prohibit armed attacks or violent riots in the name of national security, it is another to invoke national security to prohibit six people from protesting peacefully or to arrest students for eating a sandwich, reading a book or making a salute taken from a popular film.

6.3 ARBITRARY ARRESTS AND PROSECUTIONS OF PEACEFUL PROTESTERS

At least 89 people have been arrested by security forces for taking part in peaceful demonstrations or political gatherings since the 22 May Coup (23 of those were arrested in Khon Kaen Province, after being apprehended while meeting in private after the ban on

political meetings). Of those, 52 have been charged with defying NCPO Order 7/2557 banning political assemblies of more than five persons, and/or charges of incitement to cause unrest under Article 116 of the Penal Code: 61 cases are being prosecuted through the Military Court, 25 have been filed with the Criminal Court and the rest have yet to be assigned. The NCPO's use of arbitrary arrests is covered in more detail in the chapter above.

In the first protest-related verdict handed down since the military took power, on 3 July 2014 Pathumwan Municipal Court in Bangkok on 3 July convicted Weerayuth Kongkanathan for violating NCPO Order 7/2557. He pleaded guilty to the charges and was sentenced to one month in prison suspended for a year, and ordered to pay a 3,000 Baht fine (USD\$93). Weerayuth Kongkanathan was first detained by military officers on 23 May 2014 for allegedly taking part in a peaceful protest against the coup outside the Bangkok Art and Cultural Center in downtown Bangkok..

APICHAT PONGSAWAT: SINGLED OUT FOR ACTIVISM

Graduate law student Apichat Wongsawat was also arrested at the 23 May protest cited above, and, like Weerayuth Kongnathan, was also held in detention for seven days under Martial Law before being charged with violating NCPO Order 7/2557 and articles of the Penal Code²²⁵ allegedly for taking part in a demonstration intent on causing violence and disobeying state orders. He also faces charges under Article 112 of the Penal Code and CCA²²⁶.

Apichat Pongsawat maintains his innocence and his right to freedom of assembly. He believes he was singled out by the military for his history of political activism.

"I learned later that my arrest wasn't random. Plain-clothes officers took a photo of me and my picture was sent to a military arresting team that travelled by BTS [Bangkok's "sky train"] to Siam Station where we were protesting," Apichat Pongsawat told Amnesty International. "The officers said to me: 'Come with me; you've been arrested under Martial Law.' They had been following me for some time and they had a file on me with information about my political activities."

"I have been involved in social and human rights activism and I believe I was singled out because of my political opinions."

Soldiers took him to a military base, where they detained him and three others who had been arrested at the protest. They confiscated his phone and made him give up the password.

"I told them I had the right to speak to a lawyer and my family, but they just told me to shut up. 'You're a captive detainee and you have no right to speak,' the officer said to me."

Apichat Wongsawat was then transferred to the police Crime Suppression Division in Bangkok, where he was allowed to meet with his lawyer.

"I was detained there for six nights without charge. I challenged this as the Crime Suppression Division was meant for suspects of crimes, not for me; I hadn't been charged."

He was charged and questioned by police officers. He stated "I admitted my attendance at the protest but did not plead guilty to charges against me related to protests and gatherings... I cited the ICCPR and that I have the right to peaceful protest in my defence application and that I should be allowed to take part in peaceful assemblies. General Prayuth has said international standards will be upheld, I told them."

7. UNFAIR TRIALS

The human right to a fair trial has multiple components to ensure that people facing prosecutions are not punished unjustifiably, arbitrarily or excessively. These components are detailed in Article 14 of the ICCPR and include, among other things, the right to equality before the courts, the independence and impartiality of courts, the right to be tried in public, the right to prompt and detailed information about the charges, the right to legal representation of one's choice, the right to be tried without undue delay, the right to examine witnesses, the right not to be compelled to testify against oneself or to confess guilt, the right to appeal against a conviction and the right to compensation for miscarriages of justice.

- Soon after it took over power the NCPO issued Announcement 37/2557, extending the jurisdiction of military courts to the following: Offences under the Criminal Code:
 - Offences against the King, Queen, Heir-apparent or Regent, from Article 107 to Article 112 of the Criminal Code;
 - Offences against the internal security of the kingdom, from Article 113 to 118 of the Criminal Code, excluding offences that occur in areas in which the 2008 Internal Security Act is in Force or the 2005 Emergency Decree on Public Administration.

Offences against the announcements or orders of the NCPO.²²⁷

The Announcement calls for prosecution of civilians in military courts for breaching military orders which themselves violate human rights, such as the right to freedom of expression and peaceful assembly, and for breaching *lèse majesté* laws which themselves may violate the right to freedom of expression.

Under the Act for the Organization of Military Courts (1955), provincial military courts and the courts of the military circle must have a panel of three judges, including a judge advocate and two commissioned officers.

Amnesty International is opposed to civilians being prosecuted under military laws or in military courts under any circumstances, and has expressed this opposition globally. While the Human Rights Committee and the European Court have not yet held that trials of civilians before military courts are altogether prohibited, they have said that such cases should be exceptional, the courts must be independent, impartial and competent and must respect minimum guarantees of fairness.²²⁸ Nonetheless, in its Concluding Observations, the Human Rights Committee has called on governments in several countries to prohibit the trials of civilians before military courts.²²⁹

“HOLDING A PLACARD IS NOT A CRIME” – PEACEFUL PROTESTERS SENTENCED IN A MILITARY COURT

At least eight peaceful protesters, who held small A4 placards opposing the coup while they ate at McDonalds in a Chiang Rai shopping mall on 25 May 2014²³⁰ were convicted in three trials in Chiang Rai Military Court between 14 and 26 August 2014. The group included two ‘red-shirt’ leaders and one ‘red-shirt’ supporter Sarawut Kulomturapo, who had held a placard stating “Holding a placard is not crime.”²³¹

They were all sentenced to six months imprisonment terms, suspended for a year, for disobeying NCPO

Announcement 7/2557. The sentences were reduced, on the basis of their pleading guilty, to three month imprisonment terms and fines of 5,000 baht.²³² According to credible reports, military officers asked reporters not to take notes during the trials and on 26 August only allowed family members or lawyers of the accused to access the courtroom.

7.1 DENIAL OF RIGHT TO APPEAL

As stated above, a key component of the human right to a fair trial is provided in Article 14(5) of the ICCPR which provides that “everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”²³³

This right extends to all convicted persons, not only to the most serious cases, and is not subject to states parties’ discretion.²³⁴ Current trials of civilians in military courts are deemed by the Thai authorities, under Article 36 of the act for the Organization of Military Courts (1955), to be taking place during an “extraordinary period”, due to Martial Law being in effect. Article 61 of the Military Court Act states that during this period, there is no right of appeal against a ruling by a military court – not even to a higher military court.

BLACK CASE 10a/2557: FACING LENGTHY SENTENCES WITH NO RIGHT TO APPEAL

The Military Prosecutor of 23rd Military Circle charged 26 men and two women on 22 August 2014 with nine offences, including, preparing and collecting arms, financial support, and human resources to obtain training for terrorism, preparing for a terrorist act and to conceal the act, and the illegal possession of weapons, war material, ammunition, explosive material and war weapons; and communication equipment without permission.

Thailand has declared to the UN Secretary-General that it is derogating from Article 14(5) “...only where a jurisdiction has been conferred to a martial court over sections 107–112 of the Penal Code and the offences against the internal security of the Kingdom.”²³⁵

Amnesty International considers this derogation to be unacceptable and as defeating the object and purpose of the ICCPR, as it deprives accused persons of a key human right, a deprivation that renders any trial proceedings unfair and cannot be justified under any circumstances. This is not least because Thailand has a functioning judicial system that is perfectly capable of hearing appeals without such proceedings in any conceivable way harming what authorities described as “the maintenance of peace and order, solely on the grounds of affording vital national security protection”, which is the grounds on which it has justified its derogations.²³⁶

During their meeting with the NCPO, Amnesty International delegates emphasised that even within the system where military courts may legitimately operate, that is, cases concerning internal military matters and soldiers, an appeals instance must be available in order to comply with Thailand’s international human rights obligations. Civilians in Thailand should be prosecuted only in civilian courts, only for internationally recognizable crimes and only in proceedings that meet international standards of fairness.

The denial of the right to appeal has particularly grave repercussions for individuals charged with an offence that carries the death penalty²³⁷, where international standards considered to be rules of customary international law explicitly provide for the right to appeal²³⁸ a point also emphasised by the Human Rights Committee.²³⁹ Articles 107-11 of the Thai Penal Code, which are subject to the jurisdiction of the military court under NCPO Announcement 37/2557, may carry the death penalty. The Human Rights Committee has stated that “the right of appeal is of particular importance in death penalty cases” pointing to the fact that in death penalty cases “scrupulous respect of the guarantees of fair trial is particularly important... The imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant).²⁴⁰”

The Thai Ministry of Foreign Affairs has stated that the NCPO is aware of concerns regarding the trial of civilians in military courts, but that it “has reassured that, bearing in mind the concerns and special circumstances, the martial court will need to be even more thorough and careful in its consideration of each case to ensure due process of law for all defenders in a non-discriminatory manner.”²⁴¹

However, Thailand is bound to go beyond declarations, however well-intended, and carry out “due process of law” strictly as required by its international legal obligations, which include an inalienable right to appeal.

8. CONCLUSION AND RECOMMENDATIONS

“I’m not afraid. I will continue to report the news because I have done nothing wrong. It’s more reasonable that the NCPO should let its critics speak. The more we can talk freely, the less violence there is – a place to express our anger and frustration and reduce pressure that could lead to a more violent outcome.”

Journalist interviewed by Amnesty International, July 2014²⁴²

As an interim government is being established in Thailand, Amnesty International is concerned that instead of lifting restrictions, authorities are maintaining and entrenching disproportionate restrictions on the peaceful and legitimate exercise of human rights in Thailand.

One hundred days under martial law in the country have shown the dangers of the absence of detention safeguards and the sweeping unrestricted powers allowed by Martial Law. The NCPO has abused powers of detention and prosecution to silence political opposition and enforce cooperation in the name of reconciliation. Long-standing and worsening fault-lines in the protection of human rights in Thailand – including the criminalization of dissent, the vulnerability to abuse of powers of detention, torture and ill-treatment and failures to ensure redress for violations – have been thrown into sharp relief during the last three months.

As the NCPO works to implement the second and third phases of its roadmap, concrete measures outlined in the recommendations below must be taken to restore respect for the human rights it has so far violated, and will help ensure that Thailand is meeting its international obligations.

The restrictions currently in place, and abuses of the administration of justice to quash criticism, are not likely to be conducive to an environment in which an inclusive process of

reform aimed at long-term national reconciliation can flourish.

8.1 RECOMMENDATIONS TO THE THAI AUTHORITIES

RIGHT TO LIBERTY

- Repeal in law and end in practice all administrative and other forms of arbitrary detention, in particular summoning individuals to “report” to the army and detaining them without charge or trial under the Martial Law Act.
- Ensure that no one is subjected to enforced disappearance nor to torture or other cruel, inhuman or degrading treatment or punishment.
- Ensure that no one is forced through torture or other ill-treatment into testifying against him or herself or others or to confess guilt and that no such confession is accepted as evidence in court, except against a person accused of torture or other ill-treatment as evidence that the confession or other statement was made.
- Ensure that that all persons deprived of liberty are registered at the place of detention and no one is held in unofficial or secret places of detention.
- Make detailed records with the names, dates, current whereabouts and legal basis for detention of all persons deprived of liberty and make such records accessible to families and counsel for persons deprived of their liberty.
- Put in place and apply in practice all legal safeguards in detention, including by ensuring that:
 - (a) all detainees are informed of their rights at the time of detention and have the rights to promptly challenge the lawfulness of their detention before an ordinary civilian court, and to be released if their detention is found to be illegal;
 - (b) all persons deprived of liberty, without exception are brought promptly in person before an ordinary civilian judicial authority and are released unless promptly charged with recognizably criminal offences and remanded by that authority;
 - (c) all detainees have the right to promptly notify a relative of their place of detention, immediate confidential access to lawyers, to notify and regular access to relatives, and prompt access to independent medical attention as required, and that the provision of these safeguards is monitored effectively by authorities.
- Revoke all restrictions and conditions on release from detention that arbitrarily restrict peaceful exercise of rights, including movement, expression, association and assembly.
- Lift charges filed against individuals for failing to report to detention under the Martial Law Act.
- Restore passports to anyone whose passport has been revoked on the basis of failing to report.
- Instruct security officials not to harass or detain relatives in order to place pressure on their family member to report to authorities, investigate past cases of such harassment and detention, and hold accountable those who carried out or ordered such acts.
- In line with recommendations by the UN Committee Against Torture,²⁴³ strengthen the roles of the National Human Rights Commission of Thailand (NHRCT) in carrying out unannounced visits to detention facilities during which they are able to take confidential statements from detainees, by implementing the recommendations made by the NHRCT.

FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

- Lift Martial Law orders that arbitrarily restrict freedom of expression and peaceful assembly, and amend or repeal the Martial Law Act
- Lift charges against any individuals brought solely for peacefully exercising their rights to freedom of expression and assembly, and release those detained or imprisoned under such charges immediately and unconditionally.
- Repeal all laws providing for criminal defamation, and amend the Computer Crimes Act and Article 112 of the Thai Penal Code to ensure that they do not penalize peaceful exercise of freedom of expression.
- Publicly recognize the legitimacy, status and important role of human rights defenders and declare the government's unambiguous commitment to respect and promote the UN Declaration on Human Rights Defenders.

FAIR TRIAL RIGHTS

- Ensure that civilians are tried before ordinary civilian courts in proceedings which fully meet international standards of fairness.

REPARATIONS

- Investigate all complaints and reports of enforced disappearance, torture or other cruel, inhuman and degrading treatment or punishment and other offences involving human rights violations promptly, impartially, independently and thoroughly, by a civilian authority and prosecute those suspected of criminal responsibility, including those with command or other superior responsibility in a civilian court, in proceedings which meet international standards of fairness and without recourse to the death penalty.
- Establish an independent complaints system for all persons deprived of their liberty.
- Suspend officers during the investigation of allegations of torture and other ill-treatment.
- In line with recommendations to Thai authorities by the Committee against Torture, ensure that witnesses and victims of human rights violations, including of torture and enforced disappearances, and the members of their families are effectively protected from threats and harassment and assisted, in particular by establishing an independent complaints system.
- Publicly condemn practices of torture, accompanied by a clear warning that anyone committing such acts, or otherwise complicit, acquiescent or participating in torture will be subject to criminal prosecution and upon conviction, appropriate penalties.
- Prioritise and carry out transparent investigations into all incidents of political violence, regardless of position, rank or political affiliation of the perpetrators or victims.

LEGAL FRAMEWORK

National laws

- Immediately and fully restore the 2007 Constitution's human rights provisions.
- Repeal provisions in the Interim Constitution allowing the continuation and perpetuation of human rights violations by the NCPO (Article 47); providing impunity for perpetrators of such violations (Article 48); and providing powers to the Head of the NCPO which are unrestrained by Thailand international human right obligations (Article 44).
- Repeal the 1914 Martial Law Act or amend it to remove articles restricting human

rights, in particular those providing the army with the authority to detain person arbitrarily and facilitating impunity to perpetrators of human rights violations.

- Repeal all orders restricting peaceful expression, peaceful assembly, association, movement and liberty and those allowing for the trial of civilians in military courts.
- Pass legislation making torture and enforced disappearance distinct crimes under national law, in full accordance with definitions set out in UNCAT and CPED.
- In line with recommendations to the Thai authorities by the Committee against Torture²⁴⁴, review without delay existing emergency laws and practice, and repeal those incompatible with Thailand's obligations under UNCAT, in particular by ensuring that:
 - (a) detainees held without charge under security laws are promptly presented in person in court;
 - (b) detainees taken into custody are permitted to contact family members, lawyers, and independent doctors promptly following deprivation of liberty, both in law and in practice, and that the provision of these safeguards by the authorities is monitored effectively;
 - (c) there is no immunity from prosecution for officials who commit offences associated with human rights violations, including torture and ill-treatment. Thailand should carry out prompt, impartial and thorough investigations by civilian prosecutorial authorities, bring those suspected of criminal responsibility to trial and, if they are found guilty in fair trials, impose sentences commensurate with the gravity of the acts committed without recourse to the death penalty.
- Provide for all prosecutions of civilians, as well as all prosecutions on crimes under international law or human rights violations, to take place before ordinary civilian courts.

Amend articles of the Computer Crimes Act and Articles 112 and 116 of the Penal Code to protect against their use to punish anyone for peacefully exercising their human right to freedom of expression.

International law

- Ratify, without reservations the International Convention for the Protection of All Persons from Enforced Disappearance, incorporate it into law and implement it in law, policy and practice.
- Recognize the competence of the Committee on Enforced Disappearance to receive and consider individual communications.
- Ratify the Rome Statute of the International Criminal Court and incorporate its provisions into national law.
- Fully co-operate with the UN human rights mechanisms, including the Special Rapporteurs on Torture and Freedom of Expression: That should include extending open invitations and responding positively to requests for invitations already requested by the Special Rapporteurs.
- Implement recommendations made by the Human Rights Committee, UNCAT and the Universal Periodic Review process.

8.2 RESPONSE FROM THE NCPO

The Royal Thai Government's comments in response to Amnesty International Report on Thailand: Attitude Adjustment 100 Days under Martial Law

- The Royal Thai Government takes note of the report by Amnesty International (AI) on Thailand: Attitude Adjustment 100 days under Martial law. The Thai authorities met with AI representatives during AI's visit to Thailand in July 2014 and continue to welcome further dialogue with AI.
- Some of AI's recommendations made in the report are found to be useful and constructive to Thailand's endeavors in the promotion and protection of human rights. However, there are also some observations on this report, which Thailand would like to make.
- Though the report intended to focus on what happened in Thailand after 20 May 2014, the root causes of the imposition of the martial law were omitted, particularly the scale of violent incidents involving war-grade weapons, and the lack of law and order in the society. The report also failed to acknowledge the pressing needs at the time to bring the emergency situation back to normalcy as quickly as possible.
- In addition, it failed to reflect the sentiment of the majority of the Thai people who now feel much safer, with the restoration of law and order. The latest Suan Dusit and NIDA poll results in early September clearly suggested that 87.68% of the respondents continue their lives as normal without being disturbed by the existence of the martial law. They feel safe and believe that the law would do them no harm as long as they are innocent.
- Also while it claimed to report on developments in the past 100 days under Martial law, AI did not include the progresses made in term of the relaxation of some restrictions (*e.g. curfew, television and radio censorship*) during that period.

- On the other hand, a number of selected cases (e.g. Billy /Pholachi, Phuketwan, certain old cases under Penal Code Section 112) prior to 20 May were included as examples in support of allegations concerning restrictions of rights put in place by the NCPO.
- The information presented in the report on the case of Kritsuda Khunasen is also one-sided. The serious charge related to her involvement in violent incidents was not indicated. The open discussion at the meeting organized by the National Human Rights Commission (NHRC) involving relevant agencies concerned including AI Thailand in August 2014 was also not mentioned. An internal investigation had also been conducted by the NCPO on the case. So far, they found no evidences of alleged torture. At the NHRC meeting, the NCPO reiterated its readiness to verify the fact and take further action on any inquiries provided that there is enough supporting evidence.
- Quotes were also selectively extracted in such a way that might miscommunicate the real intentions of the speakers, not to mention the interpretation and cultural factors involved in the process of the interview.
- Thailand fully understands the need for individuals interviewed by AI to remain anonymous. However, that can also lead to misapprehension of the real situation leaving little room for Thai authorities to verify the fact or to seriously look into the matter to clarify.
- Thailand takes note of the concern on discrepancies in term of numbers of individuals arrested and/or held in custody of Thai authorities. Nevertheless, our official statistics of individuals ordered to report to the NCPO as of 8 September 2014 are at 471. Of which, 411 individuals have all been released, while the other 60 persons did not show up to report themselves. The numbers announced by some NGOs should also be carefully cross checked to avoid double counting the same persons who appeared in more than one NCPO's Orders.
- Looking at a broader picture, there has been steady progress in the implementation of the 3-stage Roadmap. Thailand needs this time and space for consolidation as we push forward in our effort to build a genuine and sustainable democracy. The Royal Thai Government

is also considering the possibility of lifting the Martial law in some provinces in Thailand, where possible.

- In the meantime, Thailand will continue to engage with AI to keep the office abreast of the progress made in Thailand.

8 September 2014

ENDNOTES

- ¹ Source for figures, unless otherwise stated, is Internet Dialogue on Reform (i-Law), <http://ilaw.or.th/node/3208>, and the Human Rights Situation 100 days after the Coup d'Etat published by Thai Lawyers for Human Rights on 8 September 2014. The i-Law website was established to propose new laws or amendments to existing laws in Thailand. Since the coup, i-Law is "following and recording the information concerning the violation of Human Rights".
- ² Some individuals have been charged with more than one offence.
- ³ OHCHR Press Briefing for the UN High Commissioner for Human Rights, Ravina Shamdasani, 5 August 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14918&>
- ⁴ Amnesty International interview with Deputy Police Chief Amnuay Nimmano, Bangkok Metropolitan Police Headquarters, Bangkok July 2014.
- ⁵ Originally the NPOMC before changing its English name to NCPO on 24 May 2014.
- ⁶ The NCPO abrogated the entire constitution except Chapter 2, which relates to the monarchy and the status of the King.
- ⁷ Announcement of the National Peace and Order Maintaining Council No.1/2557 Subject: On the Control of National Administration <http://www.thaigov.go.th/en/announcement-2/item/83657-announcement-of-the-national-peace-and-order-maintaining-council-no1/2557-subject-on-the-control-of-national-administration.html>
- ⁸ Amnesty International, *Fair Trials Manual* (second edition) (AI Index POL 30/002/2014), p.225.
- ⁹ Committee against Torture, Concluding observations on the initial report of Thailand, 20 June 2014, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/O57/33/PDF/G1405733.pdf?OpenElement>
- ¹⁰ Human Rights Committee, Concluding observations Thailand (2005) CCPR/CO/84/THA, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/CO/84/THA&Lang=En Report of the Working Group on the Universal Periodic Review* A/HRC/19/8 (2011) <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/172/64/PDF/G1117264.pdf?OpenElement>
- ¹¹ Thailand / Freedom of expression: UN expert recommends amendment of lèse majesté laws , 10 October 2011 <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11478&LangID=E#sthash.gHvGzkNr.dpuf>
- ¹² Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders - Mission to Thailand, March 2004 (E/CN.4/2004/94/Add.1) <http://daccess-ods.un.org/TMP/2516209.48314667.html>
- ¹³ Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention on the Rights of the Child and others.
- ¹⁴ Thailand ratified the ICCPR on 29 October 1996.
- ¹⁵ Thailand ratified UNCAT on 2 October 2007.
- ¹⁶ Letter by Permanent Mission of Thailand to the Secretary-General of the UN, received by the UN 8 July 2014.
- ¹⁷ Under Article 12 (1) of the ICCPR, by the announcement of a curfew.
- ¹⁸ The right to appeal a judgement, under Article 14 (5); by the transfer of jurisdiction from civilian to military court for a number of offences.
- ¹⁹ Under Article 19, "by the prohibition of broadcasting or publishing certain content, particularly those inciting conflict and alienation in the Society, false or provoking messages."
- ²⁰ Under Article 21 by the limitation of political gatherings.
- ²¹ Letter by Permanent Mission of Thailand to the Secretary-General of the UN, received by the UN 8

July 2014.

²² <http://www.thailawforum.com/laws/Martial%20Law.pdf>

²³ This information has been added following comments received by the Royal Thai Government on 09 September 2014. Thailand's Junta Lifts Curfew Throughout the Country, Associated Press, 13 June 2014, <http://bigstory.ap.org/article/thai-junta-says-interim-government-september>,

²⁴ Martial Law still Needed, Bangkok Post, 17 August 2014, <http://www.bangkokpost.com/news/politics/427093/martial-law-till-needed>.

²⁵ Meeting with Amnesty International, July 2014.

²⁶ See for instance Amnesty International, *Thailand: Memorandum on Human Rights Concerns* (AI Index ASA 29/01/2004), October 2004; *Thailand: If you want peace, work for justice* (AI Index ASA 39/001/2006), January 2006 (following the previous military coup).

²⁷ See extract from CAT alternative report by The Coalition against Torture to UN CAT committee, April 2014, http://voicefromthais.files.wordpress.com/2014/05/extract-from-cat-shadow-report_issues-on-the-martial-law_21-may-2014.pdf/

²⁸ Press Release for the Final Report of the Truth for Reconciliation Commission of Thailand, 17 September 2012, http://www.prachatai.com/english/sites/default/files/ENGLISH_v2%20Sep%2017.pdf

²⁹ Constitution of the Kingdom of Thailand (Interim Edition), B.E. 2557 (2014), enacted on 22 July, B.E. 2557 (2014), Article 47 [unofficial translation].

³⁰ NCPO press briefing 3 June 2014, <http://www.thaigov.go.th/en/news-2/item/83666-ncpo-to-disseminate-information-through-wwwthaigovgoth-both-in-thai-and-english.html>

³¹ NCPO press briefing 3 June 2014, <http://www.thaigov.go.th/en/news-2/item/83666-ncpo-to-disseminate-information-through-wwwthaigovgoth-both-in-thai-and-english.html>

³² Constitution of the Kingdom of Thailand (Interim Edition), B.E. 2557 (2014), enacted on 22 July, B.E. 2557 (2014) [unofficial translation].

³³ For further analysis see for instance International Commission of Jurists, 'Thailand: interim Constitution seems to ignore key pillars of rule of law', July 2014, <http://www.icj.org/thailand-interim-constitution-seems-to-ignore-key-pillars-of-rule-of-law/>.

³⁴ These provisions included, among many others, the right to life (Article 32); equal rights for men and women (Article 30); freedom from torture and other ill-treatment (Article 32); freedom from arbitrary detention (Articles 32, 34); fair trial rights (Articles 40, 197); freedom of opinion and expression (Articles 36, 45, 46, 56, 57); freedom of peaceful assembly (Article 63); and the right to an effective remedy for acts violating human rights (Articles 28, 59, 60).

³⁵ Nor is this concern a purely theoretical one – not only has the current military government provision is reminiscent of provisions enacted by previous military governments, including Article 17 of the 1959 Constitution, which permitted the Prime Minister to “order or take any action to suppress conduct that is considered to cause insecurity to the kingdom or the throne, or to threaten domestic peace.” That provision was used during Field Marshal Sarit Thanarat’s regime (1958–63) to commit human rights violations, including extrajudicial executions – at least 11 people were sentenced to death without a court hearing under this article. See Preechasinlapakul, Somchai, ‘Dynamics and the Institutionalisation of Coups in the Thai Constitution’, p24, <http://www.ide.go.jp/English/Publish/Download/Vrf/pdf/483.pdf>.

³⁶ Head of NCPO outlines the 3-step Roadmap and why he staged a coup, 10 June 2014, <http://www.thaiembassy.ca/en/about-embassy/news/head-of-ncpo-outlines-the-3-step-roadmap-and-why-he-staged-a-coup>

³⁷ ‘Thai Junta Names New Legislature’, *Wall Street Journal*, 31 July 2014, <http://online.wsj.com/articles/thai-junta-names-new-legislature-1406823860>.

³⁸ Amnesty International interview, , July 2014.

³⁹ UN Working Group on Arbitrary Detention, case of Ali Khassif Saïd Al Qarni, No. 41/2011 (Kingdom of Saudi Arabia), Communication addressed to the Government on 9 February 2011, para. 2, <http://www.unwgdatabse.org/un/Document.aspx?id=2793>

- ⁴⁰ Amnesty International interview with RTA Deputy Chief of Staff, Royal Thai Army Headquarters, Bangkok, Thailand, July 2014
- ⁴¹ The Royal Thai Government's Comments in response to Amnesty International Report on Thailand: Attitude Adjustment 100 days under Martial Law
- ⁴² 'UN rights office urges probe of alleged torture of 'Red Shirt' activist', *UN News Centre*, 5 August 2014, http://www.un.org/apps/news/story.asp?NewsID=48413#_U-1b3vldWcE.
- ⁴³ <http://ilaw.or.th/node/3208>.
- ⁴⁴ "Administrative detention" refers to measures under which individuals are detained by order of state authorities, usually on security grounds, without intent to prosecute them in a criminal trial (even if there is a form of judicial review over the detention). Such detention measures have been used by governments in every region of the world. While forms and systems of administrative detention may vary between the countries many governments have used such detention measures. Sometimes there are different forms of administrative detention in the same jurisdiction.
- ⁴⁵ 'Thai Army: Ex-PM, Protest Leaders Held To Think', *Associated Press*, 24 May 2014 <http://bigstory.ap.org/article/after-coup-thai-army-summons-shinawatra-family>.
- ⁴⁶ 'Current Political Situation in Thailand and Steps for the Future', *The Government Public Relations Department*, 30 May 2014, http://thailand.prd.go.th/view_news.php?id=7260&a=2
- ⁴⁷ "The protection of the detainee... requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members." Human Rights Committee General Comment 20, para. 11.
- ⁴⁸ Human Rights Committee Concluding observations: Armenia, UN Doc. A/56/44, (2001), para. 39(b), "Counsel, family members and the doctor of their own choice must be guaranteed immediate access to persons deprived of liberty." Committee against Torture Concluding observations: Libya, UN Doc. A/54/44, (1999), para. 187, "Spain and the free access of a person deprived of his liberty to a lawyer and to a doctor of his choice and to his relatives at all stages of detention", UN Doc. CAT/C/ESP/CO/5, (2009), para. 12.
- ⁴⁹ "To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends." Human Rights Committee, General Comment no. 7.
- ⁵⁰ 'An Account of Reporting Oneself', *Prachatai*, 3 June 2014, <http://www.prachatai.org/english/node/4080>.
- ⁵¹ Announcement no. 29/2557 of the NCPO (24 May 2014) stated, among other things, that "Failure of those individuals named under the above-mentioned Orders to report themselves within the specified date and time is punishable by up to 2 years' imprisonment or a fine of up to 40,000 baht, or both." <http://www.thaigov.go.th/en/announcement-2/item/83698-announcement-of-the-national-council-for-peace-and-order-ncpo-no-29/2557-subject-summonses-of-individuals-to-report-to-the-ncpo.html>.
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- ⁶⁴ Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HRI/GEN/1/Rev.1 at 30, para 11.
- ⁶⁵ Amnesty International interview, July 2014.
- ⁶⁶ Amnesty International interview, July 2014.
- ⁶⁷ Amnesty International interview, July 2014.
- ⁶⁸ 'NCPO says it doesn't like the word "coup"', *Khaosod English*, 12 June 2014, <http://en.khaosod.co.th/detail.php?newsid=1402567405>.
- ⁶⁹ 'An update on Thailand's political situation and information on specific human right issues', *Royal Thai Embassy Canada*, 5 August 2014, <http://www.thaiembassy.ca/en/about-embassy/news/an-update-on-thailands-political-situation-and-information-on-specic-human-right-issues>.
- ⁷⁰ Amnesty International interview, July 2014.
- ⁷¹ Amnesty International interview, July 2014.
- ⁷² Amnesty International interview, July 2014.
- ⁷³ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by UN General Assembly Res. 61/177, 20 December 2006, entered into force 23 December 2010, Art. 2. Thailand has signed the Convention but has not ratified it yet. This definition contains generally agreed-upon elements as used in previous documents and jurisprudence. The widespread or systematic use of enforced disappearance constitutes a crime against humanity, as defined in applicable international law (in Article 5).
- ⁷⁴ For findings of enforced disappearance as a violation of this right see for instance reports of the Committee against Torture, UN Doc. A/52/44 (concerning Namibia), para. 247; UN Doc. A/57/44 (2001-2), para. 93(a) (concerning the Russian Federation); UN Doc. A/59/44 (2003-4), para. 56(l) (concerning Chile); and UN Doc. A/61/44 (2005-6), paras. 29(24) (concerning Nepal) and 30(12) (concerning Sri Lanka).
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- ⁸⁸ See for instance Human Rights Committee, General Comment No. 27: Freedom of movement (Art.12), UN Doc. CCPR/C/21/Rev.1/Add.9 (1999), para. 2; General Comment no. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (2011), paras. 21-36.
- ⁸⁹ Amnesty International Interview, Bangkok Metropolitan Police, 17 July 2014.
- ⁹⁰ Amnesty International Interview, Deputy Chief of Staff Royal Thai Army, 17 July 2014.
- ⁹¹ Ibid. as above.
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- ¹²⁹ Announcement of the NPOMC No. 14/2557, Prohibition of Instigation of Conflicts and Opposition to the Function of NPOM In order to disseminate information to the public accurately and without distortion so to avoid misunderstanding and hamper the efforts of officials concerned in maintaining peace and order, relevant persons and organizations shall act as follows: 1. Prohibit the owners of printed media and of television and radio programmes, editors, programme hosts, and media, from inviting individuals or groups not currently holding official positions, both from the government and academic sectors, as well as former judges, those who worked in the judicial system and independent organizations, to give interviews or to express their opinions which might lead to further violent conflict and create confusion to the society. Those who violate this order shall be charged and prosecuted, and those print and broadcast media banned immediately. See <http://www.thaigov.go.th/en/announcement-2/item/83680-announcement-of-the-national-peace-and-order-maintaining-council-no-14/2557-subject-prohibition-of-instigation-of-conflicts-and-opposition-to-the-function-of-npomc.html>.
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¹³³ No copy currently available. Translation that follows is taken from media articles. The announcement, made on 21 July 2014 combines previous pronouncements on restrictions to media and social media – and allows for the NCPO to shut down or prosecute any media outlet that engaged in "Criticism of operations of the National Council for Peace and Order, its officials, or any related individual"; or circulated "... News or information that causes confusion, incites disputes, or leads to disunity in the Kingdom... invitation or plotting to organise in manner that may lead to resistance against officials or individuals related to the National Council for Peace and Order. Threats to harm individuals that may panic or frighten the public".

¹³⁴ No copy currently available. After Thai media organizations expressed their dissatisfaction with the restrictions under NCPO Order 97/2557, authorities issued an order amending the original, meaning that infringers face an ethics inquiry by their press associations.

¹³⁵ 'An account on a meeting with the military', *Deep South Watch*, 5 July 2014, <http://www.deepsouthwatch.org/node/5915>.

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¹⁴⁴ Interview with Amnesty International, July 2014.

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¹⁴⁷ รายงานการบุกคุกสถานที่เอกชน จับ-ค้น-คุม-คุกคาม-ยึด (เท่าที่ทราบ), *ilaw*, 13 August 2014, <http://ilaw.or.th/node/3207>

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¹⁴⁹ Amnesty International interview, July 2014

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¹⁵¹ Amnesty International interview, July 2014.

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- ¹⁵⁸ 'NCPO targets universities', *Bangkok Post*, as above.
- ¹⁵⁹ Thai Schools to Re-educate, *Chiang Mai City News*, as above; 'Thai Schoolchildren To Be Re-educated', *Khaosod Online*, as above.
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- ¹⁶¹ Penal Code Section 116 allows seven years' imprisonment for whoever makes an appearance to the public by words, writings or any other means which is not an act within the purpose of the Constitution or for expressing an honest opinion or criticism in order: To bring about a change in the Laws of the Country or the Government by the use of force or violence; To raise unrest and disaffection amongst the people in a manner likely to cause disturbance in the country; or To cause the people to transgress the laws of the Country, shall be punished with imprisonment not exceeding seven years.
- ¹⁶² The decree grants powers to "prohibit the press release, distribution or dissemination of letters, publications or any means of communication containing texts which may instigate fear amongst the people or is intended to distort information which misleads understanding of the emergency situation to the extent of affecting the security of state or public order or good moral of the people both in the area or locality where an emergency situation has been declared or the entire Kingdom"
; http://www.asianlii.org/th/legis/consol_act/edopaies2005582/
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¹⁷² 'Taxi driver jailed 2.5 years for lèse majesté in political talk with passenger', *Prachatai*, 14 August 2014, <http://www.prachatai.org/english/node/4285>.

¹⁷³ Royal Thai Government, 'National Broadcast by General Prayut Chan-o-cha Head of the National Council for Peace and Order, 1 Aug 2014', 1 August 2014, <http://www.thaigov.go.th/en/speech-2/item/85151-id85151.html>

¹⁷⁴ 'THAILAND: Freedom of Expression in Crisis – The Conviction of Somyot Prueksakasemsuk', *Asian Legal Resource Centre*, 15 February 2013, <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc22/ALRC-CWS-22-02-2013>.

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¹⁹³ Anti-Coup Minister Gets New Charge, Could Face 14 Years Behind Bars, *Khaosod English*, 20 June 2014, <http://en.khaosod.co.th/detail.php?newsid=1403257147>.

¹⁹⁴ Sombat charged with lèse majesté, *Political Prisoners of Thailand*, 14 June 2014, <https://politicalprisonersofthailand.wordpress.com/2014/06/14/sombat-charged-with-lese-majeste/>.

¹⁹⁵ The previous head of the Police's Technology Crime Suppression Division interviewed in 'Liking, Political Rumours is a crime', *Nation*, 13 August 2013, <http://www.nationmultimedia.com/politics/Liking-political-rumours-is-a-crime-30212365.html>.

¹⁹⁶ The Special Rapporteur on Freedom of Expression has expressed his concern at actions taken by States against individuals communicating via the Internet, "frequently justified broadly as being necessary to protect national security or to combat terrorism... but which often takes place for often takes place for political, rather than security reasons in an arbitrary and covert manner. For example, States have used popular social networking sites, such as Facebook, to identify and to track the activities of human rights defenders and opposition members, and in some cases have collected usernames and passwords to access private communications of Facebook users". Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 16 May 2011 A/HRC/17/27, http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf.

¹⁹⁷ Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 38.

¹⁹⁸ See Human Rights Committee's Concluding observations on the reports of Guatemala, UN Doc. CCPR/C/GTM/CO/3 (2012), para. 22; Turkey, UN Doc. CCPR/C/TUR/CO.1 (2012), para. 24; Indonesia, UN Doc CCPR/C/IDN/CO/1 (2013), para. 16; Ukraine, UN Doc. CPR/C/UKR/CO.7 (2013), para. 20.

¹⁹⁹ See Human Rights Committee, General Comment No. 31 on Article 2, para. 8.

²⁰⁰ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN General Assembly resolution 53/144, 8 March 1999.

²⁰¹ *Urgent Action: Human rights activist missing in Thailand*, Amnesty International, 30 May 2014, <http://www.amnestyusa.org/sites/default/files/uaa10314.pdf>.

²⁰² *Urgent Action: Fears for villagers after attack in Thailand*, Amnesty International, 19 May 2014, <http://www.amnesty.org/en/library/info/ASA39/006/2014/en>.

²⁰³ The NCPO provided security for the villagers, but have created obstacles in the path of their activities to represent community interests about a local mining project.

²⁰⁴ 'Journalists face Criminal Defamation Charges Thailand', *Phuketwan*, 27 April 2014, <http://phuketwan.com/tourism/journalists-face-criminal-defamation-charges-thailand-20156/>.

²⁰⁵ 'Thailand: Defamation Charges Chill Labor Rights Inquiries', Human Rights Watch, 9 April 2013, <http://www.hrw.org/news/2013/04/09/thailand-defamation-charges-chill-labor-rights-inquiries>.

TPIA action requested in case of Natural Fruit v. Andy Hall, 8 August 2014, http://business-humanrights.org/sites/default/files/documents/Letter-to-TPIA-members-on-Andy-Hall-English_1.pdf

²⁰⁶ Amnesty International interview, July 2014.

- ²⁰⁷ Amnesty International interview, July 2014.
- ²⁰⁸ A group of human rights lawyers, who describe their role as advocates and social activists providing legal aid to individuals affected by the NCPO's enforcement of the law.
- ²⁰⁹ Unofficial translation of letter provided to Amnesty International
- ²¹⁰ Amnesty International interview, July 2014
- ²¹¹ Amnesty International interview, July 2014.
- ²¹² 'Thailand: Military forcibly evicts forest residents', Human Rights Watch, 19 July 2014, <http://www.hrw.org/news/2014/07/19/thailand-military-forcibly-evicts-forest-residents>.
- ²¹³ Statement made by interrogating officer to person ordered to report to NCPO, June 2014, Amnesty International interview with individual, July 2014.
- ²¹⁴ First Report, para 25.
- ²¹⁵ Amnesty International interview, July 2014.
- ²¹⁶ 'Police detain 8 student activists before their anti-coup sandwiches activity', *Prachathai*, 22 Jun 2014, <http://www.prachatai.com/english/node/4148>.
- ²¹⁷ 'Chiang Rai Martial Court summons anti-coup protesters to hear charges', *Prachathai*, 6 June 2014, <http://www.prachatai.com/english/node/4094>.
- ²¹⁸ 'Protesters defy warning to stage rally against coup', *Bangkok Post*, 1 June 2014, <http://www.bangkokpost.com/news/politics/413002/protesters-rally-against-coup-with-three-finger-sign>; 'At least 4 protesters arrested at Asoke- Ratchaprasong anti-coup protests', *Prachathai*, 1 June 2014, http://www.prachatai.com/english/node/4070?_ga=1.267868686.1410663343.1406976951.
- ²¹⁹ The order was made pursuant to sections 8 and 11 of the 1914 Martial Law Act (MLA) 2547 regarding powers of search and prohibitions.
- ²²⁰ In a meeting with human rights lawyers in Bangkok in July 2014, lawyers described to Amnesty International events around the arrest of four persons who staged an anti-coup demonstration at Nonthaburi Pier. The lawyers said the police arrested them for defying NCPO Order 7/2557 and that they reasoned that others in the crowd meant that it was a gathering of more than five persons.
- ²²¹ 'More coup news', *Bangkok Post*, 1 June 2014, <http://www.bangkokpost.com/learning/learning-from-news/412194/coup-news>.
- ²²² 'Lone woman arrested for staging silent protest in front of Gaysorn Plaza, Ratchaprasong', *The Nation*, 1 June 2014, <http://www.nationmultimedia.com/breakingnews/Lone-woman-arrested-for-staging-silent-protest-in--30235159.html>; 'Pro-execution group defies ban on public protests', *Khaosod English*, 12 July 2014, <http://en.khaosod.co.th/detail.php?newsid=1405165357§ion=00>.
- ²²³ Interview with Amnesty International, July 2014.
- ²²⁴ Human Rights Committee, *Belyazeka v. Belarus* Communication No. 1772/2008, Views adopted 23 March 2012, paras. 11-12, Report of the Human Rights Committee, UN Doc. A/67/40 (Vol. II, 2011-12). See similarly *Gryb v. Belarus*, Communication No. 1316/2004, Views adopted 26 October 2011, paras. 13.4-13.5, *ibid.*; *Chebotareva v. the Russian Federation*, Communication No. 1866/2009, Views adopted on 26 March 2012, paras. 9-10, *ibid.*
- ²²⁵ Penal Code 215 (1, 3), 216, and 368 (1)
- ²²⁶ Apichat Pongsawat was also charged with violating Article 112 of the Penal Code – Thailand's lèse majesté law – and the CCA, on the basis of an old post the army is believed to have found on his Facebook page
- ²²⁷ Royal Thai Government, 'Announcement of the National Council for Peace and Order (NCPO) No. 37/2557 Subject: Offences under Jurisdiction of the Military Court', 25 May 2014, <http://www.thaigo.gov.th/en/announcement-2/item/83706-id83706.html>.
- ²²⁸ Human Rights Committee General Comment General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. (2007), para. 22; *Ergin v Turkey* (No.6)

(47533/99) European Court of Human Rights (2006), paras. 42-48.

²²⁹ Human Rights Committee Concluding Observations: Slovakia, UN Doc. CCPR/C/79/Add.79 (1997), para. 20; see also Concluding Observations: Lebanon, UN Doc. CCPR/C/79/Add.78 (1997), para. 14; Chile, UN Doc. CCPR/C/CHL/CO/5 (2007), para. 12; Ecuador, UN Doc. CCPR/C/ECU/CO/5 (2009), para. 5.

²³⁰ 'Chiang Rai Martial Court summons anti-coup protesters to hear charges', *Prachatai*, 6 June 2014, <http://prachatai.org/english/node/4094>.

²³¹ '1 charged for protesting against the junta in Chiang Rai, 7 protesters face trial in military court', *Prachatai*, 7 June 2014, <http://www.prachatai.com/english/node/4118>.

²³² Chiang Rai Court Sentence 7 Anti-Coup Protesters to 3 Months in Jail', *Chiang Rai Times*, 28 August 2014, <http://www.chiangraitimes.com/chiang-rai-court-sentence-7-anti-coup-protesters-to-3-months-in-jail.html>.

²³³ Human Rights Committee Concluding Observations: Slovakia, UN Doc. CCPR/C/79/Add.79 (1997), para. 20; see also Concluding Observations: Lebanon, UN Doc. CCPR/C/79/Add.78 (1997), para. 14; Chile, UN Doc. CCPR/C/CHL/CO/5 (2007), para. 12; Ecuador, UN Doc. CCPR/C/ECU/CO/5 (2009), para. 5.

²³⁴ And see Human Rights Committee, General Comment 32, para. 45.

²³⁵ Letter by Permanent Mission of Thailand to the Secretary-General of the UN, received 8 July 2014.

²³⁶ Letter by Permanent Mission of Thailand to the Secretary-General of the UN, received 8 July 2014.

²³⁷ Articles 107-10 of the Thai Penal Code, which are subject to the jurisdiction of the military court under NCPO Announcement 37/2557, carry the death penalty.

²³⁸ UN Safeguards guaranteeing protection of the rights of those facing the death penalty", approved by Economic and Social Council resolution 1984/50, 25 May 1984, safeguard 6.

²³⁹ The Human Rights Committee has stated that "the right of appeal is of particular importance in death penalty cases" pointing to the fact that in death penalty cases "scrupulous respect of the guarantees of fair trial is particularly important... The imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant)". Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 51.

²⁴⁰ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 51.

²⁴¹ 'An update on Thailand's political situation and information on specific human right issues', *Royal Thai Embassy Canada*, as above.