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UNDER SIEGE

Violations of civil and political rights under Thailand's military junta

Cover photo: Thai military takes over the streets surrounding the Victory Monument that were blocked from all traffic in order to stop the anti-coup protesters on 30 May 2014 in Bangkok. ©Paula Bronstein / Getty Images / AFP

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Introduction*

The Thai government's second periodic report under Article 40 of the International Covenant on Civil and Political Rights (ICCPR), which was due in 2009, is completely out-of-date and fails to address key issues of concern with regard to civil and political rights. Submitted six years behind schedule in June 2015, the report only covers developments from 2005 to 2008. As a result, the report glaringly omits the ousting of a democratically-elected government by a military junta, the National Council for Peace and Order (NCPO), in a coup d'état on 22 May 2014 and the negative impact this crucial event has had on the civil and political rights situation in Thailand.

While the Thai government's reply to the Human Rights Committee (CCPR)'s List of Issues (LoI) provides more up-to-date information and refers to a number of important matters raised by the CCPR, it fails to show how the severe restrictions imposed by the NCPO subsequent to the coup d'état are consistent with the provisions of the ICCPR. The Thai government has repeatedly acknowledged that certain restrictions on civil and political rights have been imposed following the May 2014 coup.¹ However, the government justified these restrictions by invoking the "necessity to restore stability and avoid further violence in the society."² These justifications are clearly inconsistent with the criteria under which restrictions under the ICCPR are permissible.

This joint FIDH/UCL/iLaw shadow report details the three organizations' concerns over the significant erosion of civil and political rights guaranteed by Article 2 (right to an effective remedy), Article 4 (derogation during a State of Emergency), Article 6 (right to life), Article 9 (liberty and security of person), Article 10 (humane treatment of persons deprived of their liberty), Article 12 (freedom of movement), Article 14 (right to equality before courts and tribunals and right to fair trial), Article 19 (right to freedom of opinion and expression), Article 21 (right to freedom of peaceful assembly), and Article 25 (participation in public affairs and the right to vote) of the ICCPR as a direct result of the NCPO's actions.

**This report is a revised and updated version of the joint shadow report submitted by FIDH, UCL, and iLaw for the 119th session of the UN Human Rights Committee (CCPR) in Geneva on 13-14 March 2017.*

Article 2 (Implementation of the covenant at the national level)

Interim constitution institutionalizes impunity, grants immunity to the junta

Articles 44, 47, and 48 of Thailand's interim constitution, promulgated on 22 July 2014, are inconsistent with the country's obligations under Article 2(3)(a) of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to an effective remedy to any person whose rights are violated.

Article 44 gives the head of the ruling military junta, the National Council for Peace and Order (NCPO), General Prayuth Chan-ocha, absolute power to issue any orders and announcements deemed necessary

1. Thai government, *Opening Statement by Mr. Charnchao Chaivanukij Permanent Secretary of the Ministry of Justice at the Second Cycle Universal Periodic Review of Thailand during the 25th Session of the UPR Working Group*, 11 May 2016

2. Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 115

for "the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the monarchy, national economics or administration of state affairs." Between 25 December 2014 and 17 January 2017, General Prayuth invoked Article 44 124 times to issue orders related to a broad range of matters. Article 265 of the new constitution, adopted in the 7 August 2016 referendum [See below, *Article 25*], authorizes General Prayuth to continue to use Article 44 of the interim constitution until a new government is appointed after the next general election.

Article 47 declares that all orders and announcements issued by the NCPO and its head since 22 May 2014 are considered "lawful, constitutional, and final."

Article 48 grants immunity from prosecution to NCPO members and all other individuals acting under orders of the NCPO head for acts committed in relation to the 22 May 2014 military coup. Article 48 states that "if those acts constitute offenses under the laws, the persons who commit those acts shall be entirely discharged from such offenses and liabilities."



Members of Thai anti-coup group Resistant Citizen gather in front of the Courts of Justice office on Ratchadaphisek Road on 12 March 2015 to petition judges to assert their authority, defy coup-makers' authority, and disallow the use of military courts to prosecute civilians. © Apichit Jinakul / Bangkok Post

On several occasions, Thai courts rejected legal challenges lodged against NCPO acts, orders, and announcements by invoking the above-mentioned articles of the interim constitution.

On 29 May 2015, the Criminal Court in Bangkok dismissed a lawsuit filed a week earlier by four anti-junta activists against NCPO head General Prayuth Chan-ocha and four other NCPO members under Article 113 the Criminal Code for staging the 22 May 2014 military coup.³ Article 113 punishes with life in prison or death whoever commits an act of violence or threatens to do so in order to overthrow the constitution or the legislative, executive, or judicial powers. While the court recognized that the NCPO's

3. Prachatai, *Criminal Court dismisses rebellion charges against Thai coup-makers*, 29 May 2015

actions were “not in accordance with the principles of a democratic regime,” it nonetheless invoked the immunity clause contained in Article 48 of the interim constitution and dismissed the lawsuit.⁴ On 19 February 2016, the Court of Appeals used the same reasoning to uphold the Criminal Court’s decision, following an appeal filed by the anti-junta activists.⁵

On 3 August 2015, the Central Administrative Court rejected a petition filed by former Pheu Thai Party Member of Parliament (MP) Watana Muangsook that sought to annul the decree against him and 154 other individuals that banned them from leaving the country without obtaining prior permission from the NCPO head.⁶ The travel ban is contained in NCPO Announcement 21/2014 [See below, *Article 12*]. The court justified its decision under Article 47 of the interim constitution.⁷

On 4 November 2016, the Administrative Court rejected a petition filed by eight community groups and the Thai NGO EnLawThai Foundation (EnLaw) that sought to nullify NCPO Order 4/2016 that eased environmental rules and regulations on the construction of power plants.⁸ The court based its decision on the fact that Order 4/2016 had been issued pursuant to Article 44 of the interim constitution.⁹

Thailand has also failed to comply with its obligation under Article 2 of the ICCPR “to respect and to ensure to all individuals within its territory and subject to its jurisdiction” the rights recognized in the covenant. The NCPO has taken numerous measures that have resulted in violations of this right guaranteed by the ICCPR. This is illustrated by the many orders and announcements issued by the NCPO, which have imposed serious restrictions on the right to liberty, the right to a fair trial, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly [See below, *Articles 9, 14, 19, and 21*].

According to Article 279 of the new constitution, all announcements, orders, and acts of the NCPO and the head of the NCPO already in force are considered constitutional and lawful. As a result, NCPO decrees can only be repealed or replaced by the new Parliament. This allows the continuation of NCPO orders and announcements that are inconsistent with Thailand’s obligations under the ICCPR.

Recommendations:

- Urge the NCPO to immediately repeal Articles 44, 47, and 48 of the interim constitution.
- Urge the Thai government to sign and ratify the Optional Protocol to the ICCPR.

4. Khaosod English, *Thai Court Dismisses Treason Charge Against Junta Leader*, 29 May 2015

5. Bangkok Post, *Appeals court rules for Prayut*, 19 February 2016

6. Prachatai, *Administrative Court dismisses charge against junta over travel ban*, 3 August 2015

7. Nation, *Court rejects Wattana’s petition over travel bans*, 4 August 2015

8. Prachatai, *Environmental groups file petition against junta order*, 18 April 2016; <http://enlawfoundation.org/newweb/?p=3027> [in Thai]

9. <http://enlawfoundation.org/newweb/?p=3027> [in Thai]

Article 4 (Derogation during a State of Emergency)

Declaration of Martial Law, derogation not in compliance with the ICCPR

The Thai Army's declaration of Martial Law on 20 May 2014 – two days before the military overthrow of a democratically elected government in a coup d'état – and the subsequent derogation from a number of provisions of the International Covenant on Civil and Political Rights (ICCPR) under Article 4 of the covenant, failed to comply with Article 4 itself.¹⁰

Under Article 4 of the ICCPR, a state party may take measures that derogate from the provisions of the covenant only when the situation amounts to a "time of public emergency which threatens the life of the nation." Thailand's situation at the time of the declaration of Martial Law failed to meet this key requirement.

The declaration of Martial Law occurred after nearly six months of continuous and, in some cases, violent anti-government street protests that were largely confined to the central areas of Thailand's capital, Bangkok.

As the Human Rights Committee (CCPR)'s General Comment No. 29 notes, not every disturbance qualifies as a public emergency that threatens the life of the nation.¹¹ The General Comment underscores that if a state party moves to invoke the right to derogate from the covenant during a mass demonstration that includes instances of violence, it must be able to justify the actions on two fronts. First, the state party must show that the situation constitutes a threat to the life of the nation. Second, the state party must demonstrate that all the measures derogating from the covenant are strictly required by the exigencies of the situation.¹² To the contrary, statements made by the Thai Army Commander-in-Chief General Prayuth Chan-ocha and the Thai government showed that the declaration of Martial Law was made "to restore law and order" and not in response to a time of public emergency that threatened the life of the nation.

In a televised announcement on 20 May 2014, General Prayuth defended the declaration of Martial Law as necessary to resolve the country's political crisis.¹³ Prayuth said the Army acted over concerns that the security situation was deteriorating and to prevent further violence between pro- and anti-government supporters.¹⁴ Prayuth stated, "We are concerned this violence could harm the country's security in general. Then, in order to restore law and order to the country, we have declared martial law."¹⁵

According to a briefing by the Thai Foreign Ministry to foreign diplomats on 20 May 2014 in Bangkok, General Prayuth cited three main reasons for invoking Martial Law. First, to prevent further violence. Second, to maintain peace and order so that all government agencies and the general public could resume their normal activities. Third, to safeguard lives and properties.¹⁶

10. The Thai government derogation concerns the following Articles of the ICCPR: Article 12(1), by the announcement of a curfew which was lifted on 13 June 2014; Article 14(5), by transferring trials of civilians accused of certain offenses to the jurisdiction of military courts; Article 19, by the prohibition of broadcasting or publishing of certain content; and Article 21, by the prohibition of political gatherings.

11. Human Rights Committee, 72nd session, *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, UN Doc. CCPR/C/21/Rev.1/Add.11, Para. 3

12. Human Rights Committee, 72nd session, *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, UN Doc. CCPR/C/21/Rev.1/Add.11, Para. 5

13. Voice of America, *Thai Military Declares Martial Law, Seeks 'Peace and Order'*, 20 May 2014

14. Voice of America, *Thai Military Declares Martial Law, Seeks 'Peace and Order'*, 20 May 2014

15. Reuters, *Thailand's army declares martial law, says not a coup*, 20 May 2014

16. Ministry of Foreign Affairs of the Kingdom of Thailand, *Briefing to the diplomatic corps on the declaration of Martial Law in Thailand on 20 May 2014*, Naradhip Auditorium, Ministry of Foreign Affairs, 20 May 2014

The government's reply to the CCPR's List of Issues (LoI), which describes Thailand's situation merely as a "transitional period," fails to justify the reasons why the measures derogating from the ICCPR are strictly required. The document simply states that the derogation under Article 4 of the ICCPR remains necessary to ensure "public order as well as to prevent any actions that might create more social divisiveness and polarization."¹⁷

The CCPR's General Comment No. 29 also stresses that state parties may in no circumstances invoke Article 4 of the ICCPR as justification for acting in violation of peremptory norms of international law, such as fundamental principles of fair trial.¹⁸ The NCPO blatantly violated Article 4 of the ICCPR when it acted to transfer the trials of civilians accused of committing offenses under Articles 107-112 of the Criminal Code to the jurisdiction of military courts as a result of the declaration of Martial Law [See below, *Article 14*].¹⁹

Finally, it must be noted that under Article 4(3) of the ICCPR, Thailand should have "immediately" informed the other state parties to the covenant of the provisions from which it had derogated. However, the Thai government only notified the other state parties to the ICCPR 79 days later, on 8 July 2014.²⁰

Recommendation:

- Urge the Thai government to immediately revoke the derogation from its obligations under Articles 14, 19, and 21 of the ICCPR.

Article 6 (Right to life)

Death penalty: "Most serious crimes" threshold not met

Despite more than seven years without executions, Thailand has failed to make any real progress towards the abolition of the death penalty.²¹

Between 2011 and 2015, Thai courts sentenced at least 917 people (819 men and 98 women) to death.²² While commutations of death sentences under royal amnesties have reduced the number of prisoners facing capital punishment over the past six years, Thai courts still continue to impose death sentences.²³

17. Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 44

18. Human Rights Committee, 72nd session, *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, UN Doc. CCPR/C/21/Rev.1/Add.11, Para. 11

19. Human Rights Committee, 72nd session, *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, UN Doc. CCPR/C/21/Rev.1/Add.11, Para. 11

20. United Nations Secretary-General, *International Covenant on Civil and Political Rights - Thailand: Notification under Article 4 (3) of the ICCPR*, 17 July 2014

21. Thailand has not executed anyone since 24 August 2009, when two men convicted of drug trafficking, Bundit Jaroenwanit and Jirawat Poompreuk, were put to death by lethal injection at Bang Khwang Prison, Nonthaburi Province.

22. Courts of Justice, *Prisoners under death sentence 2011-2015*, available at: <http://www.oppb.coj.go.th/> [in Thai]

23. FIDH/UCL, *Joint submission for the 25th Session of the Working Group on the Universal Periodic Review Human Rights Council*, April 2016. On 11 April 2011, there were 759 prisoners (676 men and 83 women) under death sentence in Thailand.

Drug-related offenses continue to represent a disproportionate share of the crimes for which death sentences have been imposed. As of January 2017, there were 435 prisoners (364 men and 71 women) under death sentence. Of this total, 163 of the men (45%) and 59 of the women (83%) had been found guilty of drug-related offenses.²⁴

Thai laws that make drug-related offenses punishable by death, such as the 1979 Narcotics Act, are inconsistent with Thailand's legal obligations under Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Article 6 states that in countries that have not abolished the death penalty, death sentences "may be imposed only for the most serious crimes." The Human Rights Committee (CCPR) has repeatedly stressed that capital punishment for drug-related offenses does not comply with Article 6 of the ICCPR.

On the legislative front, Thailand has not made any attempt to reduce the number of crimes punishable by death. To the contrary, lawmakers have introduced or adopted laws that expand the offenses that can be punished by death.

On 13 February 2015, the Act on Certain Offenses Against Air Navigation came into effect. The law prescribes the death penalty for those found guilty of acts involving lethal force that cause the closure of an airport or damage airport facilities or aircraft.²⁵

On 29 April 2015, the Amendments to the 2008 Anti-Trafficking in Persons Act came into effect. The Amendments make human trafficking a capital offense if it results in the death of a trafficked victim.²⁶

On 10 July 2015, National Legislative Assembly (NLA)-approved amendments to the 1999 Anti-Corruption Law came into effect. The amendments extended capital punishment to foreigners working for foreign governments or international organizations, who are convicted of bribery.²⁷

In December 2016, the Constitution Drafting Committee (CDC), the junta-appointed body that wrote Thailand's new constitution and that is in charge of drafting Thailand's new election laws, included the imposition of the death penalty among the provisions of the draft Organic Act on Political Parties for political party members who illegally accept money from outsiders.²⁸

Recommendations:

- Urge the Thai government to abolish the death penalty for all crimes.
- Urge the Thai government to establish an official moratorium on executions.
- Call on the Thai government to significantly reduce the number of criminal offenses that can be punished by death and remove the provision of capital punishment for all drug-related offenses.
- Call on the Thai government to sign and ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

24. Department of Corrections, *Statistics of prisoners under death sentence, January 2017*, 7 February 2017, <http://www.correct.go.th/stathomepage/ประหารชีวิตมค.60.pdf>

25. Gazette, *The Act on Certain Offenses Against Air Navigation 2015*, 13 February 2016, <http://www.ratchakittha.soc.go.th/DATA/PDF/2558%5CA%5C010%5C28.PDF>

26. Gazette, *The Amendments to the 2008 Anti-Trafficking in Persons Act*, 28 April 2015, <http://www.ratchakittha.soc.go.th/DATA/PDF/2558%5CA%5C034%5C27.PDF>

27. Gazette, *The Amendments to the 1999 Anti-Corruption Act*, 9 July 2015, <http://www.ratchakittha.soc.go.th/DATA/PDF/2558/A/060/1.PDF>

28. Nation, *CDC sets death term for political graft*, 24 December 2016

Article 9 (Liberty and security of person)

Arbitrary arrests rampant under the NCPO

Since the 22 May 2014 coup, authorities have arbitrarily detained hundreds of individuals for their criticism of the coup and the junta's policies and actions. Many of those detained were held for several days without being charged with any alleged crimes. Detainees have often been held at undisclosed places of detention – including military bases – and have been denied the right of access to a lawyer and not allowed to communicate with family members. These circumstances amount to a blatant violation of Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which states that “no one shall be subjected to arbitrary arrest or detention” and that “anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”²⁹

Most of those detained were human rights defenders; student activists; academics; writers; journalists; advocates for the reform of *lèse-majesté* (Article 112 of the Criminal Code); former Members of Parliament (MPs); former ministers of the government ousted by the military junta, the National Council for Peace and Order (NCPO); and leaders and supporters of the anti-establishment movement, the United Front for Democracy Against Dictatorship (UDD).

The NCPO has euphemistically dubbed the systematic practice of arbitrarily detaining critics as ‘attitude adjustments.’ On 29 March 2016, NCPO head General Prayuth Chan-ocha announced that individuals who continued to criticize the junta, including media persons, after having undergone previous ‘attitude adjustment’ detention would be held at military camps from three to 30 days for ‘re-education courses.’³⁰

On 31 May 2016, NCPO deputy spokesperson Colonel Sirichan Ngathong announced that the authorities would use government buildings (such as police stations and provincial courthouses) instead of military facilities as venues used for ‘attitude adjustment’ sessions.³¹ The first victim of the junta's new policy was social and environmental activist Srisuwan Janya, who was summoned for ‘attitude adjustment’ at the Laksi District Office, in northern Bangkok on 1 June 2016.³²

The NCPO has imposed harsh conditions on those released from ‘attitude adjustment’ detention. NCPO Announcements 39/2014 and 40/2014 prescribe a punishment of two years’ imprisonment and/or a 40,000 baht (about US\$1,140) fine if those freed failed to meet the conditions of their release. According to the conditions, those freed: 1) must not leave the country without obtaining the NCPO's prior authorization; and 2) must refrain from carrying out any political activities. These conditions are in clear violation of Article 12 of the ICCPR [See below, *Article 12*], which guarantees the right to leave one's own country, and Article 19 of the covenant [See below, *Article 19*], which guarantees the right to freedom of opinion and expression.

29. Article 9(2) of the ICCPR states: “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.” Article 9(3) of the ICCPR states: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”

30. Bangkok Post, *Govt critics risk 1 month ‘re-education’ Army boss says recent detentions a ‘warm up’*, 30 March 2016; Nation, *Prayut plans to design his own course for politicians*, 30 March 2016; Bangkok Post, *Prawit favours ‘re-education’ for ‘unruly’ politicians*, 28 March 2016

31. Prachatai, *Junta’s coercive political lectures to be held outside military barracks: Deputy junta head*, 31 May 2016

32. Bangkok Post, *Social activist Srisuwan called in for ‘attitude adjustment’*, 1 June 2016; Prachatai, *Attitude adjustment session held outside military barracks for first time*, 1 June 2016



A woman flashes an anti-coup salute as she reports to the NCPO on 10 June 2014. © Seksan Rojjanametakul / Bangkok Post

Finally, since the 22 May 2014 coup d'état, authorities have arbitrarily detained scores of individuals for the mere exercise of the rights guaranteed by the ICCPR, such as the right to freedom of opinion and expression and the right to freedom of peaceful assembly [See below, *Article 19*, *Article 21*, and *Article 25*]. The arbitrary nature of such deprivation of liberty has been recognized by the United Nations Working Group on Arbitrary Detention (UNWGAD) in a number of cases brought to its attention. For example, the UNWGAD has declared the deprivation of liberty of four individuals convicted under Article 112 of the Criminal Code (*lèse-majesté*) arbitrary [See below, *Article 19*].

In this regard, the Thai courts' continuous and systematic denial of bail to individuals accused of *lèse-majesté* [See below, *Article 19*] represents a blatant violation of their fundamental right to liberty, in contravention with Thailand's legal obligations under the ICCPR. Article 9(3) of the ICCPR prescribes that pre-trial detention should be an exception and should be as short as possible. In its 2011 annual report, the UNWGAD established that pre-trial detention should be an exceptional measure.³³

Recommendations:

- Urge the NCPO to repeal Announcements 39/2014 and 40/2014 and end 'attitude adjustment' sessions and all other types of arbitrary detention.
- Call on the authorities to ensure that all forms of deprivation of liberty are in conformity with Thailand's obligations under the ICCPR.

33. Human Rights Council, 11th session, *Report of the Working Group on Arbitrary Detention*, 26 December 2011, UN Doc. A/HRC/19/57 Paras. 48-58

Article 10 (Humane treatment of persons deprived of their liberty)

Prison conditions well below international standards

Thailand's prisons remain heavily overcrowded and conditions fail to meet international standards, based on information collected by FIDH and UCL. This is inconsistent with Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR), which stipulates that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

The amended Penitentiary Act, approved in December 2016 and promulgated on 18 February 2017, introduces a number of improvements compared to the 1936 Penitentiary Act. However, the new law contains several provisions that are not in line with international standards, including sections that allow the abuse of instruments of restraint on prisoners,³⁴ the practice of solitary confinement in excess of 15 consecutive days,³⁵ and the exemption for prison officials from civil and criminal liability in certain circumstances.³⁶

According to government figures, Thailand's prison population has continued to increase since 2011, with its total population numbering 283,217 inmates, as of February 2017.³⁷ The vast majority of prisoners are incarcerated for crimes involving drugs. As of February 2017, 172,283 men (70% of the total male prison population) and 31,076 women (81% of the total female prison population) were behind bars for drug-related offenses.³⁸

During Thailand's second Universal Periodic Review (UPR) on 11 May 2016, the government claimed it had considered several alternatives to imprisonment to address the overcrowding in detention centers.³⁹ However, aside from the granting of royal amnesties, no other remedy introduced by the government has been able to significantly reduce the population. As of February 2017, available official statistics from 148 prisons representing 91% of the total prison population show that these prisons are operating with a prison population of more than double the intended capacity – with an occupancy level of 222%.⁴⁰

In its reply to the Human Rights Committee (CCPR)'s List of Issues (LoI), the Thai government asserted that Thailand respected prisoners' rights and dignity and that prison conditions met international standards.⁴¹ However, testimonies gathered by FIDH and UCL from former prisoners at two prisons in Bangkok – the Central Women's Correctional Institution and the Bangkok Remand Prison – contradict the government's statements. Research indicates that poor living conditions, including inadequate access to medical treatment, food and potable water, and poor sanitation facilities continue to plague these two prisons. It is likely that similar conditions exist in other prisons across Thailand.

Former prisoners from the Central Women's Correctional Institution and the Bangkok Remand Prison reported that they only had a space of about 0.45m and 0.60m wide respectively to sleep – far less than the 1.2m² specified by the government in its reply to the LoI. With such limited space, inmates were

34. Article 21 of the amended Penitentiary Act

35. Article 69 of the amended Penitentiary Act

36. Article 30 of the amended Penitentiary Act

37. Department of Corrections, *Statistics of incarcerated persons nationwide*, 1 February 2017, http://www.correct.go.th/stat102/display/result_pdf.php?date=2017-02-01

38. Department of Corrections, *Statistics of individuals incarcerated nationwide for offenses under the Narcotics Act*, 1 February 2017, http://www.correct.go.th/stat102/display/result_pdf_drug.php?date=2017-02-01

39. Human Rights Committee, 33rd session, *Report of the Working Group on the Universal Periodic Review - Thailand*, 15 July 2016, UN Doc. A/HRC/33/16, Para. 67

40. The Department of Corrections did not provide FIDH/UCL with the official capacity for all prisons nationwide.

41. Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 88

forced to sleep on their sides in order to avoid conflicts with other prisoners. In terms of food, former prisoners described the meals inside the prisons as so “terrible” that those who had money preferred to buy their own meals from the prison shop or order food from outside the prison. Access to drinking water was difficult for some inmates, who resorted to drinking unfiltered water that smelled and/or tasted bad.

Medical care services were very difficult to access inside the prisons. A prison officer would pre-screen a prisoner before allowing the prisoner to visit the medical center. While at least one nurse would be on duty at the medical center, doctors came to the medical center only two to three times a week. Both doctors and nurses would generally prescribe *paracetamol* to the prisoners to treat most ailments.

While the prisons have separate buildings designated for different categories of prisoners, in practice, different categories of prisoners are confined in the same dormitories due to overcrowding. Former inmates reported that most prisoners are afraid to make complaints about prison conditions for fear of retribution against them from guards or from other prisoners.

Prisoners’ statements indicate that restraining devices, such as shackles, have been excessively used. One former prisoner reported an instance of a female prisoner having her feet shackled as punishment for fighting with another prisoner. In addition, male prisoners, even those on trial for non-serious offenses, continue to be shackled when they are transported from prison to court hearings. The National Human Rights Commission of Thailand (NHRCT) has denounced this as a violation of an individual’s rights and liberties.⁴²



NDM activists leave the Bangkok Military Court after 12 days in detention for distributing leaflets on the draft charter referendum in Samut Prakan Province. © Taweechai Tawatpakorn / Bangkok Post

In addition, FIDH and UCL’s research shows a trend of increased restrictions in prisons since the May 2014 coup. According to former inmates, prison officials had confiscated their mattresses, pillows, and

42. National Human Rights Commission of Thailand, *News Release on the use of restraints to the 7 students of the New Democracy Movement (NDM) group on 5 July 2016*, 9 August 2016

blankets, and replaced these items with three thin sackcloth blankets. Most inmates would lay one of the blankets down on the floor in place of a mattress. Former prisoners also reported that the Department of Corrections had banned newspapers and watching the news on TV. The Department of Corrections also began a strict enforcement of a 2012 regulation that stipulates that prisoners were required to list a maximum of 10 people, from whom they could receive visits and/or correspondence.

Of particular concern is the increased use of military bases to detain civilians, which do not afford detainees many of their basic rights. The use of the Nakhon Chaisri temporary detention facility inside the 11th Army Circle base in Bangkok illustrates this trend. Within months of its establishment in September 2015, two prisoners charged with *lèse-majesté* died at the facility. Authorities concluded that Police Major Prakrom Warunrapha had committed suicide and claimed that Suriyan Sucharitpolwong (aka 'Mor Yong') had died of septicemia.⁴³ The bodies of both men were quickly returned to their families and their remains were cremated within days of their deaths.⁴⁴ In addition, the lawyer of Adem Karadag (aka Bilal Mohammed), one of the alleged bombers of Bangkok's Erawan Shrine in August 2015, claimed that Adem had been tortured into making a confession at the Nakhon Chaisri temporary detention facility.⁴⁵ The Thai authorities have failed to conduct thorough, impartial, and credible investigations into claims of torture and other abuses at the military detention facility.

Recommendations:

- Urge the Thai government to address and resolve the issue of overcrowding in prisons by finding sustainable and effective measures to reduce the prison population. Such measures could include: rehabilitation for drug-related offenses; the imposition of fines for first-time offenders, when there is discretion in imposing fines and/or prison time; the granting of bail to people awaiting trial for certain categories of crimes, including *lèse-majesté*; the use of home detention coupled with electronic monitoring devices to prevent flight; and repatriation for foreign prisoners.
- Urge the Thai government to improve living conditions in prisons to conform with the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), particularly with regard to the amount of space allocated per prisoner, sanitation facilities, and the availability of adequate healthcare.
- Urge the National Council for Peace and Order (NCPO) to end the use of the Nakhon Chaisri temporary detention facility inside the 11th Army Circle base as a place of detention for civilians and transfer all civilians currently detained there to other prisons.

43. Nation, *Lese majeste suspect dies after hanging himself in detention cell*, 24 October 2015; AFP, *Thai fortune teller held under royal defamation law found dead*, 9 November 2015

44. Bangkok Post, *Cops trace lese-majeste suspects to graft network*, 27 October 2015; Bangkok Post, *Lese majeste suspect 'Mor Yong' dies in army custody*, 10 November 2015

45. Reuters, *Chinese Uighur was tortured into confessing role in Bangkok bomb: lawyer*, 15 February 2016

Article 12 (Freedom of movement)

Junta targets barred from travelling abroad

Since taking power on 22 May 2014, the National Council for Peace and Order (NCPO) has banned numerous Thai citizens from leaving their country. This contravenes Thailand's obligation under Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right for everyone to leave any country, including his or her own.

On 23 May 2014, the NCPO issued Announcement 21/2014, which barred 155 individuals from travelling abroad without the prior approval of NCPO head General Prayuth Chan-ocha. The announcement justified the measure based on the need "to ensure that the maintaining of peace and resolving the political conflict can be carried out in an orderly manner." On 31 May 2016, citing the need to promote reconciliation and unity among Thais, the NCPO issued Order 25/2016, which repealed Announcement 21/2014 and effectively lifted the travel ban on the 155 individuals.⁴⁶

However, the NCPO continues to enforce a travel ban against individuals released from 'attitude adjustment' detention [See above, *Article 9*] "in order to ensure peaceful and effective maintenance of peace and order." NCPO Announcements 39/2014 and 40/2014 prescribe that individuals who were summoned to report to the NCPO and subsequently released must not leave Thailand without obtaining prior authorization from the head of the NCPO. Failure to adhere to this condition is punishable with two years' imprisonment and/or a 40,000 baht (about US\$1,140) fine.

An ongoing travel ban also remains in place for individuals who have been released from detention for certain offenses under NCPO Order 3/2015, issued on 1 April 2015. These offenses include: 1) violation of NCPO orders and announcements; 2) lèse-majesté (Article 112 of the Criminal Code); and 3) sedition (Article 116 of the Criminal Code). Article 11 of Order 3/2015 prohibits such individuals from travelling abroad without obtaining prior permission from General Prayuth.

On 30 March 2016, the NCPO barred *Khaosod English* reporter Pravit Rojanaphruk from travelling to Finland to attend a conference on World Press Freedom Day (3 May).⁴⁷ Authorities provided no reason for the restriction.⁴⁸ Pravit was arbitrarily detained for 'attitude adjustment' twice, from 25 to 31 May 2014 and from 13 to 15 September 2015, for his criticism of the military junta.

Article 12(3) of the ICCPR allows the right to leave one's own country to be restricted in exceptional circumstances (protection of national security, public order, public health or morals, and the rights and freedoms of others). However, the NCPO has failed to explain how its travel bans meet the test of necessity and the requirement of proportionality – two strict conditions that must be fulfilled in order for the restrictions under Article 12(3) to be permissible.⁴⁹ In addition, the Human Rights Committee (CCPR)'s General Comment No. 27 states that laws authorizing the application of restrictions under Article 12(3) must be based on "clear legal grounds," "precise criteria," and "may not confer unfettered discretion on those charged with

46. Nation, *NCPO's order lifting travel ban published in Royal Gazette*, 1 June 2016; Prachatai, *Junta's coercive political lectures to be held outside military barracks: Deputy junta head*, 1 June 2016

47. Prachatai, *Junta bans journalist from attending press freedom day overseas*, 30 March 2016

48. Pravit Rojanaphruk (@PravitR) tweet, *BBC Thai news asked junta y forbid me from traveling 2 #Finland 2attend World Press Freedom event. Junta rep says can't give info #Thailand*, 30 March 2016

49. Human Rights Committee, 67th session, *CCPR General Comment No. 27: Article 12 (Freedom of movement)*, 2 November 1999, UN Doc. CCPR/C/21/Rev.1/Add.9, Para. 11

their execution.”⁵⁰ These requirements clearly preclude any justification for the NCPO’s travel bans, whose enforcement rests solely with General Prayuth. Finally, the restrictions violate the fundamental principle of equality and non-discrimination as they are based on political or other opinion, such as criticism of the NCPO.⁵¹

Recommendation:

- Urge the Thai government to repeal NCPO Announcements 39/2014 and 40/2014 and Article 11 of NCPO Order 3/2015.

Article 14 (Right to equality before courts and tribunals and right to fair trial)

Civilians tried in military courts

As a result of the Thai Army’s declaration of Martial Law on 20 May 2014 and NCPO Announcement 37/2014, issued on 25 May 2014, military courts assumed jurisdiction over several categories of offenses, including lèse-majesté (Article 112 of the Criminal Code) and sedition (Article 116 of the Criminal Code), committed on or after 25 May 2014. Despite the revocation of Martial Law on 1 April 2015, the NCPO continued the use of military courts for the same categories of offenses through the issuance of a new decree, NCPO Order 3/2015. From 25 May 2014 to 30 November 2016, military courts across Thailand tried 2,177 civilians in 1,716 cases.⁵²

The NCPO’s decision to subject civilians to the jurisdiction of military courts is a serious breach of international human rights standards and of Thailand’s obligations under Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR), which states that everyone has the right to a “fair and public hearing by a competent, independent and impartial tribunal.”

With regard to the issue of independence, Thai military courts are not independent from the executive branch. Military courts are units under the organizational structure of the Ministry of Defense and military judges are appointed by the Army Commander-in-Chief and the Defense Minister.⁵³ Many military judges also lack adequate legal training. The lower levels of Thai military courts are staffed with panels of three judges – one military judge advocate with legal training and two other commissioned military officers, with no legal training, who sit on the panels as representatives of their commanders.⁵⁴

With regard to the right to a “public hearing,” trials of civilians in military courts have been characterized by a lack of transparency. Military courts have held many trials behind closed doors. Military judges routinely barred members of the public, including observers from international human rights

50. Human Rights Committee, 67th session, *CCPR General Comment No. 27: Article 12 (Freedom of movement)*, 2 November 1999, UN Doc. CCPR/C/21/Rev.1/Add.9, Paras. 13 and 16

51. Human Rights Committee, 67th session, *CCPR General Comment No. 27: Article 12 (Freedom of movement)*, 2 November 1999, UN Doc. CCPR/C/21/Rev.1/Add.9, Para. 18

52. Judge Advocate General Department, *Statistics of Civilians Being Tried in Military Courts*, 13 January 2017 [in Thai]

53. Thai Lawyers for Human Rights, *Martial Law and the Military Court: Civil and Political Rights in Thailand (22 May 2014-15 January 2015)*, 2 February 2015

54. Thai Lawyers for Human Rights, *Martial Law and the Military Court: Civil and Political Rights in Thailand (22 May 2014-15 January 2015)*, 2 February 2015

organizations and foreign diplomatic missions, from entering courtrooms.⁵⁵ On numerous occasions, military courts claimed that closed-door proceedings were necessary because trials were a matter of “national security” and could “affect public morale.”⁵⁶

In addition, Article 14(5) of the ICCPR prescribes that everyone convicted of a crime has the right “to his conviction and sentence being reviewed by a higher tribunal.” However, individuals who allegedly committed certain offenses between 25 May 2014 and 31 March 2015 had no right to appeal a decision made by a military court as a result of the declaration of Martial Law and in accordance with Article 61 of the 1955 Military Court Act. The revocation of Martial Law on 1 April 2015 reinstated the right to appeal a conviction to higher military courts for offenses committed after that date.

For these reasons, the Thai government’s repeated claim that defendants before military courts are subject to the same set of rights as those who appear before civilian courts must be rejected.⁵⁷



Ophas Chansuksei, 67, (R) is escorted by prison guards to the Bangkok Military Court on 20 March 2015. © Pornchai Kittiwongsakul / AFP

On 12 September 2016, the NCPO issued Order 55/2016, which ended the practice of trying civilians in military courts. However, the order applies only to alleged offenses committed on or after 12 September 2016, and excludes past cases or trials already underway in military courts. As of 30 November 2016, 416 cases involving civilians remained under the jurisdiction of military tribunals.⁵⁸

55. Nation, *Concerns over trying civilians in military court*, 30 October 2014; Thai Lawyers for Human Rights, “Opas” sentenced to 3 years for lèse-majesté scribble on a wall, 16 October 2015; Bangkok Post, *Military court jails man for 25 years over lese majesté*, 1 April 2015

56. Prachatai, *Military Court secretly tries lese majeste cases*, 21 October 2014; Prachatai, *Court rules to try another lese majesté case in secret*, 1 December 2014; Prachatai, *Military court gives red shirt 25 years in jail for posting lese majeste on FB*, 30 March 2015; Prachatai, *Military court sets new record on lese majeste sentence; man gets 30 years behind bars*, 7 August 2015; Prachatai, *Elderly man gets additional 18 months for lese majesté messages in restroom*, 16 October 2015; Prachatai, *Military court sends elderly man to 4 years in jail over lese majesté audio clips*, 29 December 2015

57. Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 80; Universal Periodic Review, 25th session, *Thailand: Statement on Military Court*, 11 May 2015

58. Judge Advocate General Department, *Statistics of Civilians Being Tried in Military Courts*, 13 January 2017 [in Thai]

The Human Rights Committee (CCPR) declared that “the jurisdiction of military tribunals is restricted to offenses of a strictly military nature committed by military personnel.”⁵⁹ In addition, in its General Comment No. 13, the CCPR stated that the use of military courts to try civilians should be “very exceptional” and take place under conditions which “genuinely afford the full guarantees stipulated in Article 14” of the ICCPR.⁶⁰ In an opinion issued on 21 November 2016 concerning a lèse-majesté detainee in Thailand, the United Nations Working Group on Arbitrary Detention (UNWGAD) reiterated that the trial of civilians by military courts violates the ICCPR and customary international law, and that military courts can only be competent to try military personnel for military offenses.⁶¹

Recommendation:

- Urge the Thai government to end military trials of civilians and transfer all ongoing cases to the jurisdiction of civilian courts.

Article 19 (Right to freedom of opinion and expression)

Thai law contains numerous provisions that greatly limit the right to freedom of opinion and expression. Legislation that is inconsistent with international human rights standards and breaches Thailand's obligations under the International Covenant on Civil and Political Rights (ICCPR) includes: Articles 112 (lèse-majesté), 116 (sedition), 326 (defamation), 328 (libel) of the Criminal Code; and the 2007 Computer Crimes Act (amended in December 2016). In addition, numerous decrees issued by the ruling military junta, the National Council for Peace and Order (NCPO), after it seized power in a coup d'état on 22 May 2014, have imposed further restrictions on the right to freedom of opinion and expression.

Lèse-majesté detentions and imprisonments skyrocket

Under the NCPO, the number of individuals detained or imprisoned under Article 112 of the Criminal Code (lèse-majesté), has increased dramatically.⁶² Between the 22 May 2014 military coup and 1 March 2017, at least 90 individuals were arrested under Article 112. Forty-five of them were sentenced to prison terms of up to 30 years. As of 1 March 2017, about 50 individuals were either imprisoned or detained awaiting trial on lèse-majesté charges. At the time of the 22 May 2014 coup, there were six individuals behind bars on lèse-majesté charges.

In its reply to the Human Rights Committee (CCPR)'s List of Issues (LoI), the government acknowledged the increase in prosecutions under Article 112 of the Criminal Code since the 22 May 2014 military coup and attributed the surge to Thailand's “political conflict” and “political players” who exploited the monarchy for their own political gain.⁶³

59. Commission on Human Rights, 62nd session, *Principles Governing the Administration of Justice Through Military Tribunals - Principle No. 5: Jurisdiction of military courts to try civilians*, 13 January 2006, UN Doc. E/CN.4/2006/58

60. Human Rights Committee, 21st session, *ICCPR General Comment No. 13: Article 14 (Administration of Justice)*, 13 April 1984, UN Doc. HRI/GEN/1/Rev.1 Para. 4

61. Working Group on Arbitrary Detention, *Opinion No. 44/2016 concerning Pongsak Sriboonpeng (Thailand)*, 21 November 2016, Para. 32

62. Article 112 of Thailand's Criminal Code imposes jail terms for those who defame, insult, or threaten the King, the Queen, the Heir to the throne, or the Regent. Persons found guilty of violating Article 112 face prison terms of three to 15 years for each count. Any person can file a lèse-majesté complaint under Article 112.

63. Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 119

The reality is that the military junta's relentless persecution of alleged violators of Article 112 of the Criminal Code, coupled with the fact that anyone can file a *lèse-majesté* complaint, has created an environment in which the Thai authorities have applied the provisions of Article 112 in a very broad manner in order to investigate, prosecute, or detain *lèse-majesté* critics and political opponents. Two cases that exemplify this trend are those of Thanakorn Siriphaiboon and Jatuphat Boonpattaraksa (aka Pai).

Thanakorn, a factory worker and member of a Facebook group aligned with supporters of ousted Prime Minister Yingluck Shinawatra, was arrested by army personnel and police officers on 8 December 2015 in Samut Prakan Province.⁶⁴ Authorities charged him with *lèse-majesté* for posting a Facebook message that mocked the late King Bhumibol Adulyadej's dog 'Thong Daeng' and for clicking 'like' on a doctored image of King Bhumibol on Facebook and sharing it online.⁶⁵ Thanakorn remained detained until 8 March 2016, when the Bangkok Military Court released him on bail.⁶⁶

Jatuphat, a university student activist who has taken part in various peaceful anti-junta demonstrations, was arrested on 2 December 2016 in Chaiyaphum Province on charges under Article 112 of the Criminal Code and the Computer Crimes Act.⁶⁷ The charges stemmed from a Facebook post in which Jatuphat shared a biographical profile of the new King Maha Vajiralongkorn Bodindradebayavarangkun that was published on the British Broadcasting Corporation (BBC) Thai language service's website on 2 December 2016.⁶⁸ As of 1 March 2017, Jatuphat remained detained in Khon Kaen Provincial Correctional Institution after being denied bail six times.

The government has also rehashed its stale and often repeated argument that proceedings in *lèse-majesté* cases "are conducted with careful consideration and in accordance with due legal process of law."⁶⁹ These statements are contradicted by the fact that *lèse-majesté* defendants have been subjected to long pre-trial detentions and the systematic denial of bail. Only 15 of the 90 individuals (17%) arrested for alleged violations of Article 112 after the May 2014 coup were released on bail pending trial.

In addition, the transfer of *lèse-majesté* trials from civilian courts to military courts has led to a further erosion of the right to a fair trial for individuals prosecuted under Article 112 [See above, *Article 14*]. Since the 22 May 2014 coup d'état, military courts have sentenced 29 *lèse-majesté* defendants to lengthy prison terms and at least 30 *lèse-majesté* cases remain under the jurisdiction of military tribunals.

The deprivation of liberty that stems from *lèse-majesté* prosecutions is a clear violation of Thailand's legal obligations with regard to the right to freedom of opinion and expression, guaranteed by Article 19 of the ICCPR.⁷⁰ United Nations (UN) jurisprudence has invariably reaffirmed that Article 112 is inconsistent with Thailand's obligations under international law.

Article 19 provides that restrictions to this right must conform to the strict tests of necessity and proportionality. In its General Comment No. 34, the CCPR emphasized that "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition

64. Prachatai, *Activist taken from sickbed to face lèse majesté charges*, 14 December 2015; Prachatai, *Update: Man accused of lèse majesté for mocking King's dog*, 14 December 2015

65. Prachatai, *Activist taken from sickbed to face lèse majesté charges*, 14 December 2015; Prachatai, *Update: Man accused of lèse majesté for mocking King's dog*, 14 December 2015

66. Prachatai, *Military court grants bail to man mocking King's dog*, 8 March 2016

67. Khaosod English, *Activist 'Pai Dao Din' Arrested For Lese Majeste*, 3 December 2016

68. Khaosod English, *Activist 'Pai Dao Din' Arrested For Lese Majeste*, 3 December 2016

69. Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 120; Universal Periodic Review, 25th session, *Thailand: Statement on Civil and Political Rights*, 11 May 2015

70. Article 19 of the ICCPR states that everyone has the right to hold opinions without interference and the right to freedom of expression. Freedom of expression includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

of penalties.” The CCPR specifically expressed concern regarding lèse-majesté laws and said that state parties to the ICCPR should not prohibit criticism of institutions.⁷¹ The CCPR also opined that defamation laws must be “crafted with care” to ensure that they do not stifle freedom of expression and that imprisonment “is never an appropriate penalty” for the violation of these laws.⁷²

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has stressed that laws that criminalize criticism of royalty “are manifestly inconsistent with freedom of expression, and unjustifiable under Article 19(3)” of the ICCPR.⁷³

On 22 June 2015, after a review of Thailand’s report under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Committee on Economic, Social and Cultural Rights (CESCR) expressed concern over the “adverse effect of the excessive interpretation” of lèse-majesté on the enjoyment of the right of everyone to take part in cultural life. The committee recommended that Article 112 be amended with a view to ensure “clarity and unambiguity regarding the prohibited acts and that any sanctions are strictly proportionate to the harm caused.”⁷⁴

In four separate cases brought to its attention, the UN Working Group on Arbitrary Detention (UNWGAD) determined that the deprivation of liberty of former magazine editor Somyot Phrueksakasemsuk, student activists Patiwat Saraiyaem (aka Bank) and Pornthip Munkong (aka Golf), and former tour guide Pongsak Sriboonpeng was arbitrary because they were detained solely for the peaceful exercise of their right to freedom of opinion and expression.



Somyot Phrueksakasemsuk, former editor of Voice of Taksin magazine, smiles before a court hearing on 19 September 2014. The court rejected his appeal against a 10-year prison term he is serving for lèse-majesté. © Tawatchai Khemgumnerd / Bangkok Post

71. Human Rights Committee, 102nd session, *General comment No. 34 - Article 19: Freedoms of opinion and expression*, 12 September 2011, UN Doc. CCPR/C/GC/34 Para. 38

72. Human Rights Committee, 102nd session, *General comment No. 34 - Article 19: Freedoms of opinion and expression*, 12 September 2011, UN Doc. CCPR/C/GC/34 Para. 47

73. United Nations General Assembly, 71st session, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 6 September 2016, UN Doc. A/71/373, Para. 58

74. Committee on Economic Social and Cultural Rights, 55th session, *Concluding observations on the combined initial and second periodic reports of Thailand*, 19 June 2015, UN Doc. E/C.12/THA/CO/1-2, Para. 35

Equally inconsistent with Thailand's obligations under Article 19 of the ICCPR are the ongoing restrictions on the free flow of information concerning the Thai monarchy. The Thai government claimed that the purpose of Article 112 "should not be misinterpreted as curbing people's rights to freedom of opinion and expression, nor the legitimate exercise of academic freedom."⁷⁵ However, the overzealous enforcement of *lèse-majesté* has created an environment characterized by censorship and self-censorship, which has effectively eliminated any space for debate over the royal institution and the reform of Article 112.

Thailand's ongoing censorship of material that is deemed insulting to the monarchy has resulted in the ban of several books and publications. On 12 November 2014, authorities banned *A Kingdom in Crisis*, by British journalist Andrew McGregor Marshall as it makes references to the Thai royal family and the issue of the late King Bhumibol Adulyadej's succession in the context of Thailand's ongoing political crisis. Earlier books that remain banned include *The King Never Smiles*, a biography of King Bhumibol written by American journalist Paul Handley, and *The Devil's Discus*, an investigative book into the mysterious circumstances surrounding the death of King Ananda Mahidol (King Bhumibol's elder brother) in June 1946, written by British-South African author Rayne Kruger.

Between September and December 2015, the company that printed the *International New York Times* in Thailand refused to publish articles related to the Thai monarchy on four occasions.⁷⁶

The international weekly magazine *Economist* decided not to distribute its print issues in Thailand at least three times between May 2012 and January 2015 because they contained articles about members of the Thai royal family.⁷⁷

The publisher of *Matichon Weekly* decided to halt distribution of the magazine's issue for the week of 15-21 August 2014 over possible *lèse-majesté* content.⁷⁸ On 3 June 2015, the *Same Sky* political magazine, known for its criticism of Thailand's *lèse-majesté* laws, announced that it would suspend publication indefinitely because of the "climate of fear" created by the NCPO's pervasive control over the media.⁷⁹

Under the military junta, authorities have also stepped up efforts to censor online content that is considered offensive to the monarchy. On 16 December 2014, then-Information and Communication Technology Minister Pornchai Rujiprapa said that the Ministry had blocked about 1,200 websites that allegedly defamed the monarchy since the coup.⁸⁰ Between 5 January and 10 March 2015, the government's Technology Crime Suppression Division (TCSD) blocked an additional 510 URLs (including pages from Facebook, YouTube, blogs, and web boards) because their content was deemed to violate Article 112.⁸¹ On 24 April 2015, police said they had shut down 25,069 websites that allegedly disseminated *lèse-majesté* content.⁸² In early September 2015, the Army's Internal Security Operations Command (ISOC) said that authorities had blocked an additional 143 websites (for a total of 3,426 pages) that had been found to carry *lèse-majesté* content.⁸³

75. Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 120

76. AFP, *No NYT edition in Thailand after article on king's health*, 22 September 2015; AFP, *Blank spaces replace NYT article on flagging Thai economy*, 1 December 2015; Reuters, *The New York Times got censored in Thailand because of this occasion*, 5 December 2015; Prachatai, *Another Intl NYT article removed by Thai publisher*, 15 December 2015

77. *Economist* decided not to distribute its print issues in Thailand for the weeks of 12 May 2012, 16 November 2013, and 31 January 2015.

78. Prachatai, *Matichon Weekly stops distribution for fear of lèse majesté*, 15 August 2014

79. Prachatai, *Same Sky academic journal temporarily stops publishing due to fear of junta*, 10 June 2014

80. Prachatai, *Thai authority boasts blocking 1,200 alleged lèse majesté websites*, 17 December 2014

81. Bangkok Post, *Lèse majesté fight goes online*, 16 March 2015

82. Prachatai, *Thai police say more than 200 lèse majesté cases closed in 6 months*, 26 April 2015

83. Bangkok Post, *143 websites with lèse majesté content blocked*, 7 September 2015

Junta critics hit by sedition charges

Under the NCPO, authorities have increasingly used Article 116 of the Criminal Code (sedition) to target peaceful criticism of the coup and the NCPO's policies and actions.⁸⁴ From 22 May 2014 to 1 March 2017, authorities charged 62 individuals under Article 116.⁸⁵ In its reply to the Human Rights Committee (CCPR)'s List of Issues (LoI), the government claimed that Article 116 "does not apply to those who peacefully express political opinions with well intention, but aims at preventing the expression of hatred that stirs violence in the society."⁸⁶

The reality is that in most cases, the sedition charges stemmed from an overzealous, and sometimes inexplicable, application of Article 116. Examples include charges made against: 1) Former Education Minister Chaturong Chaiseng for a speech at the Foreign Correspondents' Club of Thailand (FCCT) in Bangkok, in which he criticized the 22 May 2014 military coup;⁸⁷ 2) Rinda Paruechabutr, a 45-year-old woman, for sharing a rumor about NCPO head General Prayuth Chan-ocha on social media;⁸⁸ 3) Theerawan Charoensuk, a 57-year-old woman from Chiang Mai, for posting a photo on Facebook of her holding a red plastic bowl inscribed with Thai New Year greetings from former Prime Ministers Thaksin and Yingluck Shinawatra;⁸⁹ 4) Eight people in Bangkok and Khon Kaen Province for their involvement in the creation of a satirical Facebook page entitled 'We Love General Prayuth';⁹⁰ and 5) Preecha Kaewbanpaew, a 77-year-old man, for giving flowers to a pro-democracy activist during a peaceful march in Bangkok.⁹¹

Public debate stifled, academic freedom limited

Since 22 May 2014, the NCPO has also severely restricted the right to freedom of opinion and expression by banning dozens of panel discussions and public events related to human rights, history, and democracy, because the authorities claimed the activities would affect national security. From 22 May 2014 to 31 January 2017, the NCPO suppressed at least 69 such public events, which included: a film festival; film screenings; academic seminars and panel discussions; human rights report presentations; commemoration ceremonies; civil society forums on land and environmental issues and democracy; and seminars on the 2016 draft constitution.⁹² In some cases, public events were allowed to take place but authorities closely monitored the proceedings. In addition, in the weeks after the coup, the junta intimidated numerous academics by summoning and detaining them at military bases in several locations around the country.

84. Article 116 of Thailand's Criminal Code punishes with prison terms of up to seven years "whoever makes an appearance to the public by words, writings or any other means" in order to "to raise unrest and disaffection among the people in a manner likely to cause disturbance in the country."

85. iLaw, *Charges against individuals after 2014 coup*, 1 March 2017, <https://freedom.ilaw.or.th/politically-charged> [in Thai]

86. Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 112

87. iLaw, *Chaturon : Defying NCPO order, Section 116, CCA; Case #600*

88. iLaw, *Rinda: posted a rumor that Gen. Prayuth transferred money to Singapore; Case #682*

89. Khaosod English, *Woman charged with sedition for posing with red bucket*, 29 March 2015

90. iLaw, *April 2016: 8 Facebook page administrators charged under Section 116, "Wearing White and just standing" activists arrested, and Referendum Act now in effect*, 6 June 2016

91. Khaosod English, *Elderly man gets suspended sentence for giving flowers*, 23 May 2016

92. iLaw, *Public events canceled or interfered with by the authorities since 22 May 2014*, 6 February 2017

Media censored, journalists targeted

The NCPO issued numerous decrees that restricted the dissemination of news critical of their actions. On 22 May 2014, the NCPO issued Announcement 14/2014, which ordered all media not to interview former government officials, academics, judges, or other members of independent organizations “in a way that may create conflict or confusion among the public.” On the same day, the junta issued Announcement 18/2014, which banned the distribution of news that “might be threatening to the national security.” Announcement 18/2014 also banned criticism of the NCPO and its officials, as well as information that “might cause confusion or provoke further conflict or divisions within the Kingdom.”

NCPO Announcement 97/2014, issued on 18 July 2014, replaced Announcements 14/2014 and 18/2014. It imposed an obligation for all news outlets, both public and private, to distribute information issued by the NCPO. In addition, the announcement banned “criticism of the work of the NCPO” and the dissemination of information that could harm national security, cause confusion, or incite or provoke “conflict or divisions” in the country. Failure to comply with these provisions could result in the immediate shutdown of the offending news outlet.

Article 5 of NCPO Order 3/2015, issued on 1 April 2015, authorizes the military to issue decrees that prohibit “the propagation of news or the sale or distribution of any book publication or any other media that contains [...] information that is intentionally distorted to cause public misunderstanding that affects national security or public order.”

Immediately after seizing power on 22 May 2014, the NCPO shut down 14 Thai satellite TV stations and about 3,000 community radio stations and blocked all international satellite TV transmissions. Many of the TV and radio stations were allowed to reopen by August 2014, on condition that they excluded the broadcast of political issues or content that affects national security in violation of NCPO Announcement 97/2014. At least seven satellite TV stations were required to change their names, as the channels were previously known for their political content.

In April 2015, two television channels regarded as being aligned with supporters of former Prime Minister Thaksin Shinawatra – Peace TV and 24 News – had their licenses temporarily suspended and were taken off the air for seven days for violating NCPO Announcement 97/2014. On 21 July 2016, the National Broadcasting and Telecommunications Commission (NBTC) suspended Peace TV’s broadcasting license for 30 days.⁹³ The order stemmed from three programs broadcast in March 2016, which the NBTC claimed violated NCPO Announcements 97/2014 and 103/2014.⁹⁴

Under NCPO rule, many journalists have been subjected to harassment and arbitrary detention. Renowned journalist Pravit Rojanaphruk was arbitrarily detained incommunicado twice at two separate military bases, from 25 to 31 May 2014 and from 13 to 15 September 2015, for his criticism of the military junta.⁹⁵

93. AFP, *Thai junta shuts TV channel as poll looms*, 22 July 2016

94. NCPO Announcement 103/2014, an amendment to Announcement 97/2014 issued on 21 July 2014, changed the clause banning “criticism of the work of the NCPO” to “criticism with false information with dishonest intent to destroy the credibility of the NCPO.” Nation, *Order to suspend Peace TV not related to previous case: NBTC*, 8 July 2016; Bangkok Post, *CDC slams ‘seven reasons to vote no’*, 12 July 2016

95. Nation, *The Nation’s reporter released by NCPO*, 31 May 2014; Diplomat, *How Thailand’s Military Junta Tried to ‘Adjust My Attitude’ in Detention*, 23 September 2015



Thai journalist Pravit Rojanaphruk flashes a V-sign as he stands with his mouth taped outside a military base in Bangkok where he had been summoned by the junta on 25 May 2014. © STR / AFP

Thanapol Eawsakul, co-editor of the *Same Sky* magazine, was also detained twice at military bases in Bangkok, from 23 to 30 May 2014 and from 5 to 9 July 2014, for his criticism of the junta.⁹⁶

On 25 May 2014, Thai Army personnel arbitrarily detained Watchara Malikaew, a journalist with the *Inside Phuket* magazine, at a military base in Nakhon Si Thammarat.⁹⁷

On 27 May 2014, the junta summoned Suparirk Thongchairit and Wassana Nanuam, two reporters with the *Thai Rath* and *Bangkok Post* newspapers, for asking “inappropriate” questions to NCPO head General Prayuth Chan-ocha during a press conference a day earlier.⁹⁸

On 4 October 2015, the NCPO summoned *Thai Rath*'s cartoonist Sukda Sae-lew for questioning in relation to a cartoon about the junta's economic policies.⁹⁹

On 22 October 2015, the NCPO summoned Thaweeporn Kummetha (aka Am), a reporter with the online news website *Prachatai*, for questioning in relation to an article published by *Prachatai* a day earlier. The Thai language article, authored by Thaweeporn, had accompanied an infographic that listed possible actions that could be deemed illegal under Article 112 of the Criminal Code.¹⁰⁰

On 22 June 2016, the Election Commission summoned *Matichon Weekly* cartoonist Arun Watcharasawat in connection with the publication of a cartoon that criticized the draft constitution that had been rejected by the National Reform Council in September 2015.¹⁰¹

96. Prachatai, *Same Sky* journal editor detained again for violating junta's release order, 6 July 2014; Committee to Protect Journalists, *Thai editor held for four days, accused of violating martial law*, 9 July 2014

97. Phuket Gazette, *Phuket reporter and former official summoned by army*, 26 May 2014

98. Nation, *Two reporters summoned by Army secretary, warned not to try to corner junta chief*, 27 May 2014

99. Nation, *Thai cartoonist summoned by military junta*, 4 October 2015

100. Observatory for the Protection of Human Rights Defenders, *Thailand: Intimidation and judicial harassment of Ms. Thaweeporn Kummetha*, 9 November 2015

101. Khaosod English, *Matichon Cartoonist Summoned for Criticizing Charter, But Not the One Going to a Vote*, 22 June 2016

On 10 July 2016, police in Ratchaburi Province detained *Prachatai* journalist Taweesak Kerdpoka under Article 61 of the Referendum Act for 24 hours.¹⁰² Taweesak was arrested while travelling with four activists who were campaigning against the military-backed draft constitution to report on their activities.¹⁰³ On 12 July 2016, military and police personnel in Bangkok raided *Prachatai's* office to search for campaign material that criticized the draft constitution.¹⁰⁴

Recommendations:

- Urge the Thai government to lift all restrictions that are inconsistent with Thailand's international legal obligations with regard to the right to freedom of opinion and expression.
- Urge the NCPO to repeal Announcements 97/2014 and 103/2014 and Article 5 of Order 3/2015.
- Urge the authorities to cease the arbitrary detention, intimidation, and all acts of harassment against media workers.
- Urge the authorities to immediately and unconditionally release Somyot Phrueksakasemsuk and all other individuals imprisoned under Article 112 of the Criminal Code for the mere exercise of their fundamental right to freedom of opinion and expression.
- Call on the Thai government to amend Article 112 of the Criminal Code to remove prison terms for offenses stemming from the legitimate exercise of the right to freedom of opinion and expression.
- Call on the Thai government to lift the ban on publications and all other material related to the Thai monarchy to ensure a free flow of ideas and information.
- Call on the authorities to end censorship of all print and online material that contains information related to the Thai monarchy.
- Call on the Thai government to amend Article 116 of the Criminal Code to make it compliant with Thailand's international legal obligations with regard to the right to freedom of expression.
- Call on the Thai government to arrange country visits for the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the UNWGAD, and the UN Special Rapporteur in the field of cultural rights.

Article 21 (Right to freedom of peaceful assembly)

Following the Thai Army's declaration of Martial Law on 20 May 2014 and the military junta's seizure of power two days later, severe restrictions on the right to freedom of peaceful assembly were imposed through a series of junta decrees.

On 22 May 2014, the ruling junta, the National Council for Peace and Order (NCPO), banned public gatherings of more than five people under Announcement 7/2014, which provides a punishment of one year in prison or a 20,000 baht (about US\$570) fine, or both, for violators.

NCPO Announcement 57/2014, issued on 7 June 2014, bans all political parties from "holding meetings or undertaking any political activity."

NCPO Order 3/2015, issued on 1 April 2015, contains additional restrictions on public assemblies. Article 12 of Order 3/2015 bans political gatherings of more than four people and prescribes prison terms of up to six months or a 10,000 baht (about US\$285) fine, or both, for violators.

102. *Prachatai, Prachatai journalist detained for reporting on referendum*, 10 July 2016; Reuters, *Thailand frees on bail four held for opposing draft constitution: lawyer*, 11 July 2016

103. AP, *Thai news website says its reporter detained while reporting*, 10 July 2016

104. *Prachatai, Prachatai News Office Raided by Police, Soldiers*, 12 July 2016

Authorities have routinely used NCPO Announcement 7/2014 and Order 3/2015 to detain activists and individuals who express their opposition to military rule. From 22 May 2014 to 31 January 2017, authorities arrested at least 590 individuals for taking part in peaceful demonstrations opposing military rule.¹⁰⁵ In some cases, peaceful assemblies that resulted in the arrest of participants involved symbolic acts of defiance, such as reading George Orwell's novel *1984* in public and eating sandwiches. At least 259 were charged under NCPO Announcement 7/2014 or Order 3/2015.¹⁰⁶ Military courts tried at least 257 of those charged and sentenced 16 of them to three-month suspended prison sentences and a 5,000 baht (about US\$143) fine, and one to a three-month suspended prison sentence and a 4,000 baht (about US\$114) fine.¹⁰⁷

In addition, authorities frequently used NCPO Order 3/2015 to arrest or prosecute scores of individuals who sought to campaign against Thailand's draft charter ahead of the constitutional referendum held on 7 August 2016 [See below, *Article 25*].



Thai police arrest a student during an anti-junta demonstration on 22 May 2015 in Bangkok, to mark one year since General Prayuth Chan-ocha seized power in a military coup d'état. © Borja Sanchez-Trillo / Getty Images / AFP

NCPO Announcements 7/2014 and 57/2014 and Article 12 of NCPO Order 3/2015 contravene Article 21 of the International Covenant on Civil and Political Rights (ICCPR), which states that no restrictions can be placed on the exercise of the right to peaceful assembly other than those that are “necessary in a democratic society in the interests of national security or public safety, public order [...]” The Thai government has consistently failed to explain how the sweeping ban on assemblies contained in the above-referenced NCPO decrees is compatible with Article 21 of the ICCPR. In its reply to the Human Rights Committee (CCPR)’s List of Issues (LoI), the government justified the ongoing restrictions on the

105. iLaw, *Political Rights and Freedom of Expression in Thailand – 2016 Report: The Sound of Silence*, 29 December 2016 [in Thai]; iLaw, *January 2017 monthly report*, 31 January 2017

106. iLaw, *Charges against individuals after 2014 coup*, 31 January 2017, <https://freedom.ilaw.or.th/politically-charged> [in Thai]

107. iLaw, *Charges against individuals after 2014 coup*, 31 January 2017, <https://freedom.ilaw.or.th/politically-charged> [in Thai]

right to peaceful assembly with the need to “restore stability and avoid further violence in the society,” and maintain “peace, order and security.”¹⁰⁸ These vague criteria do not meet the stringent test of necessity and the requirement of proportionality, which make restrictions permissible under Article 21.¹⁰⁹ The United Nations (UN) Special Rapporteur on the rights to freedom of peaceful assembly and of association has previously stressed that freedom to assemble is to be considered the rule and its restriction the exception.¹¹⁰

Public Assembly Act targets activists, human rights defenders

The Public Assembly Act, adopted by the junta-appointed National Legislative Assembly (NLA) on 9 July 2015 and which came into effect on 13 August 2015, contains several restrictions that do not comply with international standards related to the right to peaceful assembly, including Article 21 of the ICCPR.

The law requires protesters to apply for permission from police 24 hours in advance. It bans demonstrations within 150 meters of royal places, or within the compounds of Government House, Parliament, and courthouses, unless a specific area has been authorized and designated by authorities. It also bans rallies from 6pm to 6am and bars protesters from blocking entrances or creating a disturbance at government offices, airports, seaports, train and bus stations, hospitals, schools, and embassies. Violators of these clauses can face prison terms of up to six months or a fine of up to 10,000 baht (about US\$285), or both.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has repeatedly stated that if organizers of a demonstration fail to notify the authorities, the assembly should not be dissolved automatically and the organizers should not be subject to criminal or administrative sanctions resulting in fines or imprisonment.¹¹¹ The Rapporteur also said that spaces in the vicinity of iconic buildings such as presidential palaces or parliaments should also be considered public space and that peaceful assemblies should be allowed to take place in those locations.¹¹²

Since its enactment, authorities have invoked the Public Assembly Act many times to prevent activists and human rights defenders from holding public demonstrations or activities.¹¹³ In addition, on 6 January 2016, police in Bangkok detained labor union leaders Chalee Loysoong and Amorndech Srimuang and threatened to charge them under the Peaceful Assembly Act in connection with their union activities.¹¹⁴ In May 2016, human rights lawyer Anon Nampa was charged under the Peaceful Assembly Act for his participation in two peaceful demonstrations in support of eight detained junta critics on 20 and 27 April 2016, in Bangkok.¹¹⁵

108. Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Paras. 87, 113, 115

109. Human Rights Council, 23rd session, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 24 April 2013, UN Doc. A/HRC/23/39, Para. 47

110. Human Rights Council, 23rd session, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 24 April 2013, UN Doc. A/HRC/23/39, Para. 48

111. Human Rights Council, 23rd session, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 24 April 2013, UN Doc. A/HRC/23/39, Para. 51

112. Human Rights Council, 23rd session, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 24 April 2013, UN Doc. A/HRC/23/39, Para. 66

113. Prachatai, *Thai military forbids youth camp in Loei ore mine area*, 27 August 2015; Prachatai, *Chiang Mai-Bangkok rally for land rights aborted after pressure from military*, 24 December 2015; Prachatai, *Police intimidate activists rallying in Isaan*, 1 July 2016; Prachatai, *Police forbid commemoration of anti-coup suicide*, 20 September 2016; Prachatai, *7 anti-mine activists summoned under Public Assembly Act*, 20 December 2016

114. Prachatai, *Thai authorities detain, follow labour union leaders*, 8 January 2016

115. Prachatai, *Update: Human rights lawyer indicted with showing support for junta critics*, 24 May 2016

In its reply to the CCPR's LoI, the Thai government stated that almost all requests for public assembly had been approved except for a few public gatherings seen to be "politically motivated, misleading, and provocative."¹¹⁶ These criteria fail to meet the test of necessity and proportionality and are in blatant contradiction with Article 21 of the ICCPR. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that any restriction imposed on the nature or content of the message the organizers and participants want to convey, especially in relation to criticism of government policies, should be proscribed.¹¹⁷

Recommendations:

- Urge the Thai government to lift all restrictions that are inconsistent with Thailand's international legal obligations with regard to the right to freedom of peaceful assembly.
- Urge the NCPO to immediately repeal Announcement 7/2014 and Article 12 of Order 3/2015.
- Call on the government to arrange a country visit for the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association.

Article 25 (Participation in public affairs and the right to vote)

Election results disregarded

Since undergoing its first review under Article 40 of the International Covenant on Civil and Political Rights (ICCPR) in July 2005, Thailand experienced two military takeovers of democratically elected governments, on 19 September 2006 and 22 May 2014. Military coups have been a regular occurrence in Thailand's modern history, with 12 coups d'état since the country became a constitutional monarchy in 1932.

The military justified the two most recent overthrows of democratically elected governments in 2006 and 2014 with the same reasons – the need to ensure national unity and reconciliation, and to fight corruption.¹¹⁸ Following the May 2014 coup, the ruling military junta, the National Council for Peace and Order (NCPO) reiterated that the military would continue to seize power whenever it is necessary, to ensure national reconciliation. On 10 February 2015, NCPO head General Prayuth Chan-ocha did not rule out the possibility of future military coups. Prayuth stated that "Thailand is different from other countries. If something cannot be solved [by the government], the military will solve it."¹¹⁹ On 19 January 2017, NCPO deputy head General Prawit Wongsuwon confirmed that coups would still be necessary in cases "when the country is mired in conflict and lack of understanding."¹²⁰

Following the 22 May 2014 coup, the NCPO repeatedly promised to hold a general election. However, the NCPO delayed its initial pledge to hold a general election in October 2015, to September 2016, and then again, to July 2017. In the most recent development related to the holding of a general election, on 5 January 2017, General Prayuth announced that the polls would not be held until early 2018.¹²¹

116. Human Rights Committee, 119th session, *Replies of Thailand to the list of issues*, 15 November 2016, UN Doc. CCPR/C/THA/Q/2/Add.1, Para. 117

117. Human Rights Council, 23rd session, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, 24 April 2013, UN Doc. A/HRC/23/39, Para. 59

118. Guardian, *Thai military claims control after coup*, 19 September 2006; Bloomberg, *Thailand coup leader Sondhi says government corrupt*, 20 September 2006; Guardian, *Coup needed for Thailand 'to love and be at peace again' - army chief*, 23 May 2014; Nikkei Asian Review, *Thai leader pledges to weed out corruption before election*, 10 February 2015

119. Nikkei Asian Review, *Thai leader pledges to weed out corruption before election*, 10 February 2015

120. Bangkok Post, *Prawit spurns calls for military to sign unity pact*, 19 January 2017

121. Nation, *Election to be held early next year, PM tells Canadian envoy*, 6 January 2017

The overthrow of a number of democratically elected governments by the Thai military, and the subsequent protracted delays in holding a general election are inconsistent with Thailand's obligations under Article 25(2) of the ICCPR. According to the Human Rights Committee (CCPR)'s General Comment No. 25, such obligations encompass the respect for the results of genuine elections and the need for polls to be held "at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors."¹²²



Protesters march during an anti-coup protest on 26 May 2014 in Bangkok. © Paula Bronstein / Getty Images / AFP

Unelected legislative body a junta rubber stamp

The May 2014 military coup also deprived Thai citizens of the right to take part in the conduct of public affairs through freely chosen representatives – a right guaranteed by Article 25(a) of the ICCPR.

After abolishing the Senate and temporarily assuming the powers and responsibility of both houses of Parliament, on 31 July 2014, NCPO head General Prayuth Chan-ocha installed a fully appointed unicameral legislative body, the National Legislative Assembly (NLA), to adopt laws during the junta's rule.¹²³ The NLA, originally composed of 200 members, was progressively expanded to 250.¹²⁴ More than half of NLA members are high-ranking military and police officers.¹²⁵ The NLA acts as a rubber stamp to adopt legislation promoted by the NCPO without much debate or opposition. Between 16 September 2014 and 27 January 2017, the NLA passed 217 laws. With only one exception, every vote was nearly unanimous. The average approval rate of the laws among the NLA members was 96%.

122. Human Rights Committee, 57th session, *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, 12 July 1996, UN Doc. CCPR/C/21/Rev.1/Add.7, Paras. 9 and 19

123. Reuters, *Thai junta gives security forces majority in interim legislature*, 31 July 2014

124. Thai PBS, *28 new members of the NLA appointed*, 28 September 2014; Prachatai, *More soldiers without legislative experience appointed as lawmakers*, 12 October 2016

125. Prachatai, *Three more military generals appointed as lawmakers*, 3 February 2017

Constitutional referendum process not in line with the ICCPR

The referendum process that led to the approval of Thailand's new constitution on 7 August 2016 failed to comply with Article 25(b) of the ICCPR.¹²⁶

The CCPR's General Comment No. 25 states that freedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected.¹²⁷ It also stresses that to ensure the full enjoyment of rights protected by Article 25 of the ICCPR, the free communication of information and ideas about public and political issues between citizens is essential. It requires the full enjoyment and respect for the rights guaranteed by Articles 19, 21, and 22 of the ICCPR, including the freedom to engage in political activity individually or through political parties and other organizations, and the freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, and to advertise political ideas.¹²⁸

None of the above-mentioned conditions were present in the lead-up to the 7 August 2016 referendum. Thailand's oppressive legal framework [See above, *Article 19, Article 21*] stifled free and open public debates on the draft constitution due to numerous provisions that imposed severe restrictions on the right to freedom of opinion and expression and the right to freedom of peaceful assembly. Authorities frequently used repressive NCPO decrees to prevent individuals and civil society from campaigning against the draft constitution. Political parties were unable to campaign as a result of NCPO Announcement 57/2014, issued on 7 June 2014, which bans all political parties from "holding meetings or undertaking any political activity."

In addition, the Referendum Act, approved by the junta-appointed NLA on 7 April 2016 with an effective date of 23 April 2016, contained specific provisions designed to prevent criticism of the draft constitution. Under Article 61 of the Referendum Act, "anyone who disseminates text, images or sound, through newspapers, radio, TV, electronic media or other channels, that are either false or delivered in a violent, offensive, rude, inciting or threatening way, with the intention to influence voters to refrain from voting or voting in a certain way, or abstain from voting, shall be considered as a person who creates confusion in order to disrupt voting procedures." Violators faced jail terms of up to 10 years, fines of up to 200,000 baht (about US\$5,713), and the revocation of voting rights for a period of up to 10 years. In addition, Article 63 of the Referendum Act prohibited the publication of opinion polls or surveys related to the referendum from seven days prior to 7 August until the end of voting day. Violators faced imprisonment for up to three months or a 6,000 baht (about US\$171) fine, or both.

126. Article 25(b) guarantees the right of every citizen to vote and to be elected at genuine periodic elections this shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

127. Human Rights Committee, 57th session, *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, 12 July 1996, UN Doc. CCPR/C/21/Rev.1/Add.7, Para. 12

128. Human Rights Committee, 57th session, *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, 12 July 1996, UN Doc. CCPR/C/21/Rev.1/Add.7, Para. 25



An illustration depicting voters being coerced by guns is displayed during a protest against the military crackdown on discussion and debate on the draft constitution ahead of the August 2016 constitutional referendum, in front of the Bangkok Art and Culture Center on 16 July 2016. © Lillian Suwanrumpha / AFP

Authorities frequently used the Referendum Act to arbitrarily arrest and charge individuals who criticized or campaigned against the draft constitution. From 27 April to 6 August 2016, authorities arbitrarily detained at least 55 people under NCPO Order 3/2015 and the Referendum Act for criticizing or campaigning against the draft constitution. Authorities also detained at least 38 members of the anti-establishment United Front for Democracy Against Dictatorship (UDD) in connection with the group's attempts to establish referendum monitoring centers.¹²⁹

In addition to the numerous instances of arbitrary detention of critics of the draft charter, authorities also imposed other significant restrictions on public debate of the draft constitution. Police and military personnel regularly attended and monitored public discussions on the draft constitution.¹³⁰ In many cases, authorities ordered organizers to cancel seminars and panel discussions on the draft charter.¹³¹ In others instances, authorities intimidated meeting participants.¹³²

Recommendations:

- Call on the Thai Armed Forces to respect the results of future free and fair elections and refrain from seizing power from democratically elected governments.
- Call on the Constitution Drafting Committee (CDC) and the NLA to ensure that the organic laws necessary for the holding of a general election conform to international standards for elections.
- Urge the NCPO to hold a general election without delay and allow for campaigning by political parties and an open public debate prior to the polls.
- Urge the NCPO to repeal Announcement 57/2014 to allow political parties to hold meetings and undertake political activities.
- Call on the Thai authorities to drop criminal proceedings against all individuals charged under NCPO Order 3/2015 and the Referendum Act for exercising their right to freedom of opinion and expression and the right to peaceful assembly in relation to the draft charter and the constitutional referendum.

129. FIDH, *Unfair referendum process demands the repeal of oppressive decrees*, 10 August 2016

130. Bangkok Post, *Group seeks referendum bill challenge*, 11 May 2016; Prachatai, *Police confiscate flyers on draft charter from academic*, 25 April 2016; Bangkok Post, *Heed voice of women, govt urged*, 20 June 2016

131. Prachatai, *Seminar about new charter draft aborted at junta's order*, 4 February 2016; Bangkok Post, *Amnat Charoen authorities close same charter forum twice*, 13 February 2016; Bangkok Post, *Junta gives students runaround at football game*, 14 February 2016; Prachatai, *Seminar on draft charter aborted over junta's political gathering ban*, 27 February 2016; Bangkok Post, *Charter talks banned*, 2 April 2016; Khaosod English, *Junta Bans Bookstore Talk on Draft Charter*, 2 April 2016; Bangkok Post, *Group seeks referendum bill challenge*, 11 May 2016

132. Prachatai, *Police confiscate flyers on draft charter from academic*, 25 April, 2016; Prachatai, *Police ask organiser of seminar on draft charter whether he has a brain*, 15 June 2016; Bangkok Post, *Group seeks referendum bill challenge*, 11 May 2016



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