



## **FIDH – International Federation for Human Rights**

### **UN Human Rights Committee (HRC) - 117th Session - Thailand Submission for the adoption of the List of Issues**

Following the ousting of a democratically elected government by a military coup d'état on 22 May 2014, Thailand has witnessed a significant erosion of key civil and political rights. The military junta that seized power with General Prayuth Chan-ocha as its head, operates under the name of the National Council for Peace and Order (NCPO).

This submission details FIDH's concerns over the deterioration of human rights guaranteed by Articles 2, 9, 12, 14, 19, and 21 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a state party, as a direct result of the NCPO's actions.

#### **Interim constitution, NCPO orders and announcements inconsistent with Thailand's obligations under ICCPR**

Several provisions of Thailand's interim constitution, promulgated on 22 July 2014, are inconsistent with the country's obligations under Article 2 of the ICCPR, which guarantees the right to an effective remedy to any person whose rights are violated. Articles 44 and 47 of the interim constitution deny this right.

Article 44 of the interim constitution gives General Prayuth Chan-ocha absolute power to issue any decrees deemed necessary for "the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the Monarchy, national economics or administration of State affairs." In addition, Article 47 of the interim constitution declares that all such orders are "deemed to be legal, constitutional and conclusive."

Numerous orders and announcements issued by the NCPO since the 22 May 2014 coup 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. These curbs are inconsistent with Thailand's obligations under Articles 2, 9, 14, 19, and 21 of the ICCPR.

Under Announcement 7/2014, issued on 22 May 2014, the NCPO banned public gatherings of more than five people and provided a punishment of one year in prison or a 20,000-baht (USD570) fine, or both, for violators. Article 12 of Order 3/2015, issued on 1 April 2015, contained additional restrictions on public assemblies. Article 12 banned political gatherings

of more than four people and prescribed prison terms of up to six months or a 10,000-baht (USD285) fine, or both, for violators. This sweeping ban is a blatant violation of Thailand's obligations under Article 21, which guarantees the right to peaceful assembly.

Announcement 37/2014, issued on 25 May 2014, gave military courts jurisdiction over the trials of civilians for various criminal offenses, including alleged violations of Article 112 of Thailand's Criminal Code (*lèse-majesté*). This measure has resulted in serious violations of Article 14 of the ICCPR [See below *Civilians tried in military courts*].

Announcement 97/2014, issued on 18 July 2014, imposed an obligation for all news outlets, both public and private, to distribute the 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 Order 3/2015, issued on 1 April 2015, authorized the military to issue orders that prohibit "the propagation of news or the sale or distribution of any book publication or any other media which contains [...] information that is intentionally distorted to cause public misunderstanding that affects national security or public order." Announcement 97/2014 and Article 5 of Order 3/2015 are inconsistent with Thailand's obligations under Article 19 of the ICCPR, which guarantees the right to freedom of opinion and expression.

Order 13/2016, issued on 29 March 2016, conferred sweeping police powers on members of the Armed Forces to prevent and suppress 27 categories of crimes including those that are "against public peace, liberty and reputation." Order 13/2016 authorized the deprivation of liberty of persons for up to seven days in unrecognized places of detention without any judicial oversight. This is contrary to the right to an effective remedy, the right to judicial control of the deprivation of liberty, and the right to a fair trial, guaranteed by Articles 2, 9, and 14 of the ICCPR.

### **Arbitrary detention of junta critics continues**

Since the 22 May 2014 coup, authorities have arbitrarily detained several hundreds of individuals for their criticism of the coup and the junta's policies and actions. Many of those detained have been 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 communication with family members. These circumstances amount to a blatant violation of Article 9 of the ICCPR.<sup>1</sup>

Most of those detained were human rights defenders, student activists, academics, writers, journalists, *lèse-majesté* advocates, former ministers of the government ousted by the

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<sup>1</sup> 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."

NCPO, and leaders and supporters of the pro-government movement 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, 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 across the country from three to 30 days for 're-education courses.'<sup>2</sup>

The NCPO has imposed harsh conditions on those released from 'attitude adjustment' detention. Order 39/2014 and Order 40/2014 prescribed 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 must not: 1) leave the country without obtaining the NCPO's prior authorization; and 2) refrain from carrying out any political activities. These conditions are in clear violation of Article 12 of the ICCPR, which guarantees the right to leave one's own country, and Article 19 of the ICCPR, which guarantees the right to freedom of opinion and expression.

At least two former ministers in the government ousted by the NCPO, former Education Minister Chaturon Chaisaeng and former Commerce Minister Watana Muangsook, have been barred from travelling abroad after being subjected to 'attitude adjustment' detention as a result of their criticism of the NCPO. For the same reason, in March 2016, the NCPO barred *Khaosod English* reporter Pavit Rojanaphruk from travelling to Finland to attend a conference on World Press Freedom Day (3 May).<sup>3</sup>

### **Rights to freedom of expression and peaceful assembly severely restricted, criminalized**

Announcement 7/2014 and Order 3/2015 have been routinely used to detain activists and individuals who peacefully expressed their opposition to military rule. From 22 May 2014 to 31 March 2015, authorities arrested at least 214 individuals for the peaceful expression of criticism of military rule. 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 and eating sandwiches in public.

Authorities have also increasingly used Article 116 of the Criminal Code (sedition) to target peaceful criticism of the coup and the NCPO's policies and actions. Article 116 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." Since the 22 May 2014 coup, at least 38 individuals have been charged under Article 116.

Since 22 May 2014, the NCPO has severely restricted the right to freedom of opinion and expression by banning dozens of panel discussions and public events related to human

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<sup>2</sup> 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

<sup>3</sup> Prachatai, *Junta bans journalist from attending press freedom day overseas*, 30 March 2016

rights, history, and democracy, which the authorities claimed might affect national security. Events 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. In some cases, public events were allowed to take place, but authorities closely monitored the proceedings.

### **Lèse-majesté imprisonments increase**

The repression of freedom of expression related to content deemed offensive to the Thai monarchy has dramatically increased under the NCPO. Since 22 May 2014, at least 36 individuals have been sentenced to prison terms under Article 112 of Thailand's Criminal Code (lèse-majesté).<sup>4</sup> At the time of the military takeover, six people were behind bars as a result of prison sentences handed down for lèse-majesté violations. As of 31 March 2016, there were 34, a nearly six-fold increase.

The NCPO's abuse of Article 112 has led to serious human rights violations that represent a breach of Thailand's obligations under the ICCPR related to the right to liberty (Article 9), the right to a fair trial (Article 14), and the right to freedom of opinion and expression (Article 19).

Long pre-trial detentions and the systematic denial of bail to which many lèse-majesté defendants have been subjected are significant violations of their fundamental right to liberty, guaranteed by Article 9 of the ICCPR. 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 (guaranteed by Article 14 of the ICCPR) for individuals prosecuted under Article 112 [See below *Civilians tried in military courts*].

Nearly 75% of post-coup lèse-majesté arrests, detentions, and imprisonments have been related to the exercise of the right to freedom of opinion and expression. The deprivation of liberty that stems from these 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.

Equally inconsistent with Thailand's obligations under Article 19 of the ICCPR have been the ongoing restrictions on the free flow of information concerning the Thai monarchy. Authorities have systematically banned books and magazines, prevented public discussions, blocked websites, censored news outlets, and suppressed any other type of information or dialogue that is considered critical of the Thai royal family. These curbs have eliminated any space for debate over the royal institution and the reform of Article 112.

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<sup>4</sup> Article 112 of Thailand's Criminal Code states: "*Whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years.*"

## 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, committed from 25 May 2014. Despite the revocation of martial law on 1 April 2015, the replacing decree, NCPO Order 3/2015, prescribed that military courts continued to have jurisdiction over civilians accused of those offenses. From 25 May 2014 to 30 September 2015, military courts across Thailand have tried 1,629 civilians.<sup>5</sup>

The jurisdiction of military courts over civilians is a serious breach of international human rights standards and a breach of Thailand's obligations under Article 14 of the 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 of government. Military courts are units of the Ministry of Defense, and military judges are appointed by the Army Commander-in-Chief and the Minister of Defense. Military judges also lack adequate legal training. Thai lower military courts consist of panels of three judges, and only one of them has legal training. The other two are commissioned military officers who sit on the panels as representatives of their commanders.

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. In many cases, military judges routinely barred the public, including observers from international human rights organizations and foreign diplomatic missions, from entry into the courtroom. 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."

Article 14(5) of the ICCPR also 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 reinstated the right to appeal a conviction to higher military courts for offenses committed after that date, in accordance with the provisions of the 1955 Military Court Act.

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<sup>5</sup> TLHR, *Civilian trial in military courts*, 13 November 2015