

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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Thailand: Pattern of international human rights violations since 22 May 2014 **Statement** **16 September 2014**

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law through advocacy, education and research. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

On 3 September 2014, the UN Office of the High Commissioner for Human Rights (OHCHR) in Southeast Asia, expressed serious concern about increasing restrictions on human rights defenders in exercising their rights to peaceful assembly and expression in Thailand.¹ LRWC shares this concern and is increasingly troubled by the appearance of a systematic pattern of human rights violations since the military take-over of the country by the National Council for Peace and Order (NCPO) on 22 May 2014.

Thailand has announced that on 12 November 2014 it will seek election by the General Assembly to membership in the UN Human Rights Council (HRC). The 2006 founding resolution of the HRC provides that members of the HRC “shall uphold the highest standards in the promotion and protection of human rights” and “shall fully cooperate with the Council...”² The situation of human rights in Thailand since its coup d'état on 22 May 2014 suggests Thailand is unable at present to fulfil these qualifications of HRC membership.

The current pattern of human rights violations in Thailand includes:

1. An interim constitution dated and imposed on 22 July 2014 which subordinates international human rights and puts legislative, executive and judicial branches of government under military control;
2. Military orders abrogating independence of the judiciary in civilian courts;
3. Unlawful use of military tribunals to try civilians;
4. Arbitrary detention;
5. Reported torture of detainees;
6. Increased use of *lèse majesté* (insulting the monarchy) penal laws to prevent and punish lawful dissent;
7. Use of criminal defamation laws to silence human rights defenders;
8. Unlawful derogation of the rights to freedoms of expression, association and assembly including restrictions on human rights defenders;
9. Violation of the right of citizens to take part in the conduct of public affairs and the right to express their political will through voting in free and genuine elections.

¹ UN Office of the High Commissioner for Human Rights, “*Increasing restrictions on human rights defenders in Thailand*,” UN OHCHR, 3 September 2014, available at: <http://www.un.or.th/increasing-restrictions-on-human-rights-defenders-in-thailand-3-september/>

² UN General Assembly, *Human Rights Council: resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251, available at: <http://www.refworld.org/docid/4537814814.html>.

1. The interim constitution dated 22 July 2014 fails to guarantee internationally protected rights

Since taking control of all branches of the Royal Thai Government on 22 May 2014, the NCPO has promulgated an interim constitution³ which purports by Section 3, to make Thailand's international human rights treaty obligations subordinate to the interim constitution. Section 6 of the interim constitution provides for a national legislative assembly (NLA) appointed by the King "in accordance" with the recommendations of the NCPO. While Section 26 provides that judges are independent, Sections 44, 47 and 48 place the NCPO beyond the scrutiny of the courts. Section 44 states that the head of the NCPO has absolute power to make orders he deems necessary for sweeping purposes of "reform, public harmony, public order or national security," and precludes judicial review by stating that such orders are "deemed to be legal, constitutional and conclusive." Similarly, section 47 provides that all orders made by the NCPO since the coup are "deemed to be legal, constitutional and conclusive." Section 48 provides the NCPO with "exemption from accountability" for illegal acts connected with the coup. Such exemption from accountability unlawfully places the actions of the NCPO beyond judicial review and as such contravenes the *International Covenant on Civil and Political Rights* (ICCPR) Article 2, which guarantees persons an effective remedy when their rights are violated, including violations committed against them by persons acting in their official capacities. By precluding remedies for violations of the ICCPR by State authorities, the interim constitution effectively nullifies and contravenes all the rights provided in the ICCPR. The creation of Damrongdhama Centres (Fair Justice Centres)⁴ within the Ministry of Interior to address citizen complaints "in line with policy" of the NCPO does not constitute an independent body to provide an effective remedy as required by the ICCPR which was ratified by Thailand in 1996.

2. Abrogation of independence of the judiciary in civilian courts

On 22 May 2014 the NCPO ordered that courts operate under NCPO directives. On 24 May the NCPO clarified this order and directed courts and other independent bodies to refrain from expressing opinions that might affect the functioning of the NCPO.⁵ The NCPO has thus abrogated Thailand's civilian courts' capability to ensure fair trial rights in a "competent, independent and impartial tribunal established by law" as guaranteed by the ICCPR, Article 14 (1).

3. Denial of fair trial rights through unlawful use of military tribunals to try civilians

On 25 May 2014, the NCPO ordered that civilians accused of violations of NCPO orders, *lèse majesté* and security offences would be tried by military courts.⁶ This provision contravenes fundamental rights to due process and fair trial. Thailand's military courts, operated by the Ministry of Defense, are not independent, there is no right of appeal and military courts lack safeguards provided in civilian courts. The UN Human Rights Committee (HR Committee) has noted that the ICCPR Article 14 fair trial requirements apply to "all courts and tribunals within the scope of that article, whether ordinary or specialized, civilian or military"⁷ and that States are "required to provide objective reasons for trying a civilians in a military court and why ordinary courts could

³ *Constitution of the Kingdom of Thailand* (Interim), B.E. 2557 (2014), given 22 July 2014. Unofficial translation available at <http://lawdrafter.blogspot.ca/2014/07/translation-of-constitution-of-kingdom.html>

⁴ Damrongdhama Center established in all provinces nationwide, National News Bureau of Thailand, 1 September 2014, http://thainews.prd.go.th/centerweb/newsen/NewsDetail?NT01_NewsID=WNPOL5709010010004

⁵ Announcement of the National Peace and Order Maintaining Council No. 11/2557: Subject: Termination of the Constitution of the Kingdom of Thailand," 22 May 2014, available at: <http://www.thaigov.go.th/announcement-2/item/83702-announcement-of-the-national-peace-and-order-maintaining-council-no-33/2557-subject-request-for-cooperation-from-the-courts-independent-organizations-and-other-agencies.html>; "Announcement of the National Peace and Order Maintaining Council No. 33/2557 Subject: Request for cooperation from the Courts, Independent Organizations and other Agencies," 24 May 2014 available at: <http://www.thaigov.go.th/announcement-2/item/83702-announcement-of-the-national-peace-and-order-maintaining-council-no-33/2557-subject-request-for-cooperation-from-the-courts-independent-organizations-and-other-agencies.html>

⁶ Announcement of the National Council for Peace and Order (NCPO) No. 37/2557 [2014]: Offences Under the Power of the Military Court to Examine and Decide, 25 May 2014, available at: <http://www.thaigov.go.th/en/announcement-2/item/83706-id83706.html>

⁷ UN Human Rights Committee, *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, paragraph 22, available at: <http://www.refworld.org/docid/478b2b2f2.html>

not be used.”⁸ The NCPO has provided no lawful justification for using military courts to try civilians. Most of the civilians to be tried in military courts are considered political opponents and include people accused of failing to obey NCPO orders or participation in peaceful protests. The NCPO has expanded the jurisdiction of the military courts to include jurisdiction over persons accused of acts that allegedly took place prior to the NCPO order.

4. Arbitrary detention

Since the 22 May military coup, the NCPO has subjected at least 571 persons to arbitrary arrest and/or detention. Hundreds of people have been detained incommunicado in secret locations without charge for periods of seven days apparently in reliance on the *Martial Law Act* of 1914. In at least two cases, detentions have exceeded the 7-day period allowed even by the *Martial Law Act*.⁹ The NCPO has taken into military custody elected officials, political activists, academics, journalists, human rights defenders and lawyers. The risk of enforced disappearance, torture, and other ill-treatment is known to increase significantly when detainees are held incommunicado.

5. Reported torture of detainees

Allegations of torture of persons in military custody have begun to surface. A report on 8 September 2014 by the Thai Lawyers for Human Rights Association (TLHRA) reports they have received 14 complaints of torture or ill-treatment of persons during interrogation while in military detention including reports of kicking, punching, application of electrical shocks to genitals and threats of death or abuse.¹⁰

6. Increased abuse of *lèse majesté* laws to prevent and punish lawful dissent

On 7 October 2011, concerns regarding *lèse majesté* laws were raised during the UN Universal Periodic Review of Thailand. Also in October 2011, the UN Special Rapporteur on the right to freedom of opinion and expression urged Thailand to amend its *lèse majesté* laws (Section 112 of the *Penal Code* and the 2007 *Computer Crimes Act*) stating that “[t]he threat of a long prison sentence and vagueness of what kinds of expression constitute defamation, insult, or threat to the monarchy, encourage self-censorship and stifle important debates on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression.” The UN Working Group on Arbitrary Detention in 2012 concurred with the Special Rapporteur and stated that Thailand’s harsh criminal sanctions for *lèse majesté* “are neither necessary nor proportionate and violate the country’s international human rights obligations.”¹¹ Since the coup, there has been increased use of *lèse majesté* charges to punish persons engaged in dissenting activities. Application of *lèse majesté* penal provisions has been very broad, reportedly extended even to Facebook posts referring to international law principles.¹² There are serious concerns about violation of fair trial rights, including failure to apply the presumption of innocence and allegations that lawyers have been stopped from making submissions on behalf of their clients’ pre-trial release.¹³

7. Abuse of criminal defamation laws to silence human rights defenders

On 24 August 2014, Ms. Pornpen Khongkachonkiet, Director of the Cross Cultural Foundation, received a summons to appear on charges of criminal defamation filed by the Royal Thai Navy after she wrote a letter expressing concern about allegations of torture in a case in the south of Thailand. The OHCHR had raised a concern about this case on 19 August 2014. Thailand’s criminal defamation legislation fails to meet

⁸ Ibid, para 4.

⁹ Thai Lawyers for Human Rights Association, *The Human Rights Situation 100 Days after the Coup*. TLHRA, 8 September 2014, available Protection Online: <http://protectiononline.org/files/2014/09/ALL-EN-TLHR-100-days-Human-Rights-Report1.pdf>; HRW, “Thailand: Opposition Supporter ‘Disappeared,’” see note 9. For further commentary on the promulgation of the *Martial Law Act*, see LRWC’s statement of 20 June 2014, available at: <http://www.lrwc.org/?p=8201>

¹⁰ TLHRA report 8 September 2014, available at: <http://protectiononline.org/files/2014/09/ALL-EN-TLHR-100-days-Human-Rights-Report1.pdf>

¹¹ *Somyot Prueksakasemsuk v. Thailand*, Working Group on Arbitrary Detention, Opinion No. 35/2012, U.N. Doc. A/HRC/WGAD/2012/35 (2012), available online UMN: <http://www1.umn.edu/humanrts/wgad/35-2012.html>

¹² TLHR report, see note 7.

¹³ TLHR report, see note 7.

international human rights standards and is being used attempt to silence journalists and human rights defenders who expose human rights violations.¹⁴ In 2000, a UN Special Rapporteur stated that criminal defamation laws “represent a potentially serious threat to freedom of expression...” and recommended that criminal defamation laws “be repealed in favour of civil laws as the latter are able to provide sufficient protection for reputations.”¹⁵ In 2005, the HR Committee expressed concern about intimidation and restrictions on freedom of expression through defamation lawsuits in Thailand.¹⁶ In the context of military control of all branches of the Thai government, the use of criminal defamation legislation by the Royal Thai Navy to prosecute human rights defenders (including human rights journalists) is alarming.

8. Unlawful restrictions on human rights defenders and continued unlawful derogation of the rights to freedoms of expression, association and assembly

Freedoms of expression, association and assembly have been severely curtailed in violation of the ICCPR. All criticism of the NCPO is forbidden. On 2 September 2014, the TLHRA planned an educational event at the Foreign Correspondents’ Club of Thailand to discuss its report on the human rights situation after the May 22 coup in Thailand. Military officials reportedly made telephone calls and sent a letter requesting cancellation of the event on the grounds that the event would violate NCPO Announcement No. 7/2557 prohibiting political gatherings of more than five people. In August, Amnesty International Thailand was requested to send a representative to a police station and was asked to cancel a public event calling for protection of civilians in Gaza. Curtailment of such events contravenes the State duty to ensure the right to freedoms of expression and assembly guaranteed by the ICCPR and recognized by the UN *Declaration on Human Rights Defenders* adopted by consensus of the member States of the UN General Assembly in 1999.¹⁷

9. Violation of the right of citizens to political participation, including the right to vote in free and genuine elections.

No meaningful steps have been taken to call a universal suffrage election in the foreseeable future. This is an egregious violation of the *Universal Declaration of Human Rights* (UDHR), Article 21(3) and the ICCPR Article 25.

¹⁴ Australian journalist Alan Morison and Thai journalist Chutima Sidasathian are currently being prosecuted by the Royal Thai Navy on criminal defamation charges for republishing excerpts of a Pulitzer-Prize-winning article about alleged human-trafficking networks. UK human rights researcher Andy Hall is currently being prosecuted by the Natural Fruit Co. Ltd. for exposing alleged violations of migrant workers’ rights.

¹⁵ UN Human Rights Council, *Report of the Special Rapporteur on access to information, criminal libel and defamation, the police and the criminal justice system, and new technologies*, E/CN.4/2000/632000, para. 52, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2000/63&Lang=E>

¹⁶ UN Human Rights Committee: *Concluding Observations: Thailand*, 8 July 2005, CCPR/CO/84/THA, available at: <http://www.refworld.org/docid/43f2ff76a.html>

¹⁷ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>. The Declaration, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding including the ICCPR. The Declaration was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation. It states: “everyone has the right, individually or in association with others, to promote the protection and realization of human rights and fundamental freedoms at the national and international levels” (Article 12.1); “everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms” (Article 1); “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration” (Article 12.2); and “[i]n the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject *only to such limitations as are in accordance with applicable international obligations* and are established by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society” (Article 17, emphasis added).

LRWC recommends that States:

1. Undertake diplomatic initiatives at the current session of the HRC to support action by Council members urging Thailand to uphold its international human rights obligations and to immediately:
 - a. cease and remedy arbitrary detention;
 - b. restore and protect freedoms of expression, association and assembly;
 - c. restore the jurisdiction of civilian courts over all matters involving civilians;
 - d. revoke all provisions granting civil and criminal immunity to the NCPO;
 - e. revoke the interim constitution;
 - f. restore civilian rule by means of free and fair elections.
2. Vote against Thailand's election to the HRC on 12 November 2014 at the UN General Assembly.
3. Send diplomatic staff to attend hearings of human rights defenders and journalists charged or detained in relation to *Martial Law Act* of 1930, *lèse majesté* or criminal defamation offences.
4. Suspend all bilateral assistance to, or cooperation with, Thailand pending restoration of:
 - a. democratic civilian rule by means of free and fair elections;
 - b. the jurisdiction of independent civilian courts over all matters involving civilians; and
 - c. respect for and compliance with Thailand's international law obligations including obligations under the ICCPR and UDHR.