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Thailand: ICJ alarmed at increasing use of arbitrary powers under Article 44

Thailand should immediately end the use of [Article 44](#) of the Interim Constitution which gives the Head of the military junta [sweeping, unchecked powers](#) contrary to the rule of law and human rights, said the International Commission of Jurists (ICJ), today.

Despite widespread international condemnation of Article 44, its use has increased every year since the Interim Constitution was promulgated on 22 July 2014 following the *coup d'état* of 22 May 2014. The Head of the National Council for Peace and Order (NCPO), Prayut Chan-o-cha, has issued at least 107 Orders under Article 44 (available in the public domain): At least one in 2014; 44 in 2015; and 62 in 2016 to date – with 37 Orders being issued since June 2016 alone.

“The Head of the NCPO’s increasing willingness to use extraordinary powers to make *ad hoc*, arbitrary changes to existing laws and regulations without judicial oversight should be alarming to everyone, including the business sector,” said Wilder Tayler, Secretary General of the ICJ. “Article 44 places law making power in the hands of one man, while Articles 47 and 48 of the Interim Constitution block judicial review or access to remedies and reparation. This is entirely inconsistent with the three fundamental pillars of the rule of law, equality, accountability and predictability, and should be revoked immediately.”

The Article 44 orders range from those restricting the civil rights of all people in Thailand to those aimed at seemingly minor and ordinary bureaucratic processes. To date, Article 44 has been used to introduce a raft of revisions into existing Thai law without observing proper process or practice, including providing for the acquisition of land for the establishment of Special Economic Zones bypassing the usual environmental and social checks and balances provided for in domestic legislation; granting military officers sweeping powers of investigation, arrest and detention; and prohibiting the gathering of five or more persons for political purposes.

“It is long past time for Thailand to revoke Article 44 and all others laws, orders and announcements issued since the military coup that are inconsistent with the rule of law and human rights,” Tayler said. “The justifications the military presented for such measures were never valid or credible, and certainly not so after more than two years of direct military rule.”

All Orders issued under Article 44 – and all other NCPO Orders and Announcements – will continue to remain in force under the draft Constitution that was accepted at a public referendum on 7 August 2016, and may only be repealed or amended by an Act.

Last week, Deputy Prime Minister Wissanu Krea-ngam announced that the NCPO was considering converting many of the hundreds of orders issued by the NCPO into legislation, including those issued under Article 44.

Background

Article 44 of the interim Constitution gives the head of the NCPO unfettered power to give any order 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...” Any such order “...is deemed to be legal, constitutional and final...”

Article 47 provides that all NCPO announcements and orders given since the coup and up until the Cabinet takes office "...regardless of their legislative, executive or judicial force..." are also "... deemed to be legal, constitutional and final"; and Article 48 states that all acts of the NCPO in relation to the coup, including any acts by people connected to the NCPO, even if the acts are illegal, "...shall be exempted from being offenders and shall be exempted from all accountabilities."

[Article 279 of the draft Constitution](#) accepted at a public referendum on 7 August 2016 provides that all NCPO orders, announcements and acts including those issued under Article 44 "...already in force prior to the date of promulgation of this Constitution or will come into force... irrespective of their constitutional, legislative, executive or judicial force, shall be considered constitutional and lawful and shall continue to be in force under this Constitution." They can only be repealed or amended by the passage of an Act.

Article 2 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a State Party, guarantees that any person whose rights are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity and that such a remedy shall be determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State. The authorities are required to develop the possibilities of judicial remedy.

Some human rights may be subject to restriction for specific purposes if the restriction is proportionate to a specific need. [Article 4 of the ICCPR allows for States to take emergency measures that further restrict \("derogate from"\) some human rights beyond what might normally permitted, but only in "time of public emergency which threatens the life of the nation" and then only "to the extent strictly required by the exigencies of the situation."](#) Some human rights can never be restricted in any circumstances, such as the prohibition of torture and other ill-treatment. The ICJ considers that most of the purposes invoked by the military government in Thailand are not recognised by the ICCPR as valid grounds for restricting human rights; that in so far as some of the purposes could theoretically be valid grounds, the specific measures adopted have not been proportionate; and that Thailand does not face a situation of emergency that could meet the threshold necessary for derogations in emergencies under Article 4.

At the recent second cycle Universal Period Review of Thailand's human rights record by the Human Rights Council several states recommended the amendment or revocation of laws and orders inconsistent with human rights and the rule of law including those issued under Article 44. In response, Thailand stated "...we are not ready to accept these recommendations at this stage. But that is with an understanding that as the situation improves, there will continue to be more relaxation of unnecessary limitations. Some useful elements in the recommendations will also be taken into serious consideration by relevant agencies."

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