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**SUBMISSION OF THE INTERNATIONAL COMMISSION OF
JURISTS & THAI LAWYERS FOR HUMAN RIGHTS TO THE
UNIVERSAL PERIODIC REVIEW OF THAILAND**

Submitted on 21 September 2015

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Thai Lawyers for Human Rights (TLHR), a coalition of human rights lawyers and defenders, formed immediately following the May 2014 coup d'état in Thailand. The collective's aim has since been to raise awareness about human rights violations resulting from the imposition of martial law and military rule in the country. The organization runs a 24-hour hotline and uses the information gathered to disseminate public awareness and advice for those summoned or arrested. TLHR provides free litigation and legal assistance for vulnerable people whose rights have been affected by martial law and who do not have legal representatives.

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SUBMISSION OF ICJ AND TLHR TO THE UNIVERSAL PERIODIC REVIEW OF THAILAND

Introduction

1. The International Commission of Jurists (ICJ) and Thai Lawyers for Human Rights (TLHR) welcome the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Thailand.
2. In this submission, the ICJ and TLHR wish to draw the attention of the HRC and the Working Group on the UPR to the organizations' concerns about:
 - (1) the impact of the new legal and institutional framework, imposed since the May 2014 *coup d'état*, on human rights in Thailand;
 - (2) instances of suspected enforced disappearance and torture; and
 - (3) issues concerning international human rights instruments and mechanisms.

Impact of the new legal and institutional framework imposed since the May 2014 *coup d'état* on human rights

3. Thailand's new institutional and legal framework, cemented by the 22 May 2014 military *coup d'état*, severely limits the exercise of human rights within the country.

Background

4. After 20 May 2014, the Thai military, using the name "the National Council for Peace and Order" (NCPO), progressively replaced civilian power with military rule by: implementing martial law throughout the country;¹ staging a *coup* on 22 May 2014;² dissolving the civilian government; suspending the 2007 Constitution (except for the Chapter that deals with the Monarchy) and replacing it with an interim Constitution that gives the military ultimate power over the country; and extending the jurisdiction of military courts to civilians for certain offences.³
5. On 22 July 2014, the NCPO promulgated an interim Constitution giving the NCPO sweeping, unchecked powers violating the fundamental pillars of the rule of law and human rights, including equality, accountability, and predictability of the law.⁴
6. 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."⁵

7. The courts have upheld the NCPO's lack of accountability under the interim Constitution. For example, on the one-year anniversary of the *coup*, a group of activists called Resistant Citizen lodged a lawsuit against Prime Minister General Prayuth Chan-Ocha and five others, accusing them of treason for instigating the *coup*. On 29 May 2015 the Court of first instance dismissed the suit, holding that article 48 of the Interim Constitution exempts the NCPO from accountability under the law.⁶ On 29 July 2015, the group appealed the dismissal.⁷ At the time of the submission, the case is still pending before the Appellate Court.
8. The unpredictable legal landscape following the change in constitution has also prevented alleged victims of human rights violations from seeking remedies, including reparation. For example, the revocation of the 2007 Constitution, which guaranteed remedies for torture or other cruel, inhuman or degrading treatment, was used to deny effective remedies to Hasan Useng, who claimed he was tortured by security forces in the country's restive 'deep South' in April 2014.⁸ In an *amicus curiae* submission filed in the proceedings, the ICJ submitted that international standards dictate that Thailand may not rely on provisions of its internal law to justify a failure to adhere to its obligations under international law, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁹ However, on 7 October 2014, the Pattani Provincial Court ruled that Hasan Useng was not entitled to judicial remedies or reparation as his claim had been made under Article 32 of the 2007 Constitution, which had been revoked at the time of the judgment.¹⁰

NCPO orders and announcements

9. Since 22 May 2014, the NCPO has issued at least 214 orders and 122 announcements.¹¹ Many of these orders and announcements are inconsistent with Thailand's international human rights obligations, including: imposing a nationwide curfew¹² (lifted on 13 June 2014); banning political gatherings of more than five people;¹³ limiting media freedom;¹⁴ summoning individuals to military camps;¹⁵ ordering the prosecution of civilians in military courts for certain offences, including for violation of NCPO orders and announcements; and recourse to the overly broad and vague "crime" of *lèse majesté*.¹⁶
10. Several courts have upheld the primacy of the NCPO's orders. For example, the Bangkok Military Court, in a number of decisions following challenges to its jurisdiction over civilians, citing article 47 of the interim Constitution, held that all NCPO orders are final and therefore binding on the Court.¹⁷ In August 2015, the Central Administrative Court dismissed the petition of a politician requesting the Court to revoke a NCPO order banning 155 people from travelling abroad. The Court justified its ruling citing article 47 of the interim Constitution.¹⁸

Martial Law

11. On 20 May 2014, two days before the *coup*, the military imposed nationwide martial law. Thailand's martial law provides the military with superior powers over civil authorities, including the power to administratively detain individuals for up to seven days without charge and without requiring that they be brought before the courts.

On the same day, the ICJ called for the order to be revoked pointing out that, under international law, the use of emergency measures violating human rights are only permissible to the extent strictly necessary to meet a specific threat to the life of the nation.¹⁹

12. Internet Law Reform Dialogue (iLaw), a Thai civil society organization monitoring the situation after the military *coup*, has reported that, between 22 May 2014 and 31 August 2015, at least 1,261 individuals were summoned to military camps and/or arrested by the military.²⁰ The total number nationwide is unknown, as the Government has not released official figures.
13. These detentions are continuing up until the time of this submission, with some media reporting, on 10 September 2015, a recent “uptick” in summonses of those accused of criticizing the government.²¹
14. On 1 April 2015, nearly a year after imposing martial law nationwide, the NCPO lifted martial law from most provinces in Thailand. However, martial law remains in place in those areas where it was already imposed prior to 20 May 2014.²²
15. After lifting martial law from most provinces in the country, the NCPO invoked article 44 of the Interim Constitution to issue order No. 3/2015, later augmented by order No. 5/2015, which gives appointed “peace and order maintenance officers” many of the same powers the military has under martial law, including to: administratively detain people in military facilities for up to seven days without charge; carry out warrantless searches; and curb freedom of expression.²³ Order No. 3/2015 also upholds the ban on political gatherings of more than five people; and gives the military even broader powers than it has under martial law, including to carry out investigations. Order No. 3/2015 also states that any actions taken under it are not subject to review by the Administrative Court and that claims for compensation brought against peace and order maintenance officers who have acted in good faith are prohibited.
16. On 2 April 2015, the UN High Commissioner for Human Rights responded to the replacement of martial law by Article 44 of the interim Constitution by saying “Normally I would warmly welcome the lifting of martial law – and indeed strongly advocated for it to be lifted in Thailand ... But I am alarmed at the decision to replace martial law with something even more draconian, which bestows unlimited powers on the current Prime Minister without any judicial oversight at all.”²⁴

Independence of the judiciary and use of military courts to prosecute civilians

17. While Article 26 of the interim Constitution guarantees the independence of the judiciary, the lack of judicial independence in Thailand under the NCPO is demonstrated by the use of military courts to prosecute civilians, notwithstanding State assertions that military court judges are independent.²⁵
18. Shortly after the *coup*, NCPO announcements 37/2014, 38/2014, and 50/2014²⁶ expanded the jurisdiction of military courts to certain offences, including purported violations of NCPO orders and the overly broad and vague “crime” of *lèse majesté*.²⁷ According to a

government source, between 22 May 2014 and 30 June 2015, over 900 civilians were prosecuted in military courts located throughout Thailand, including 171 people in Bangkok alone.

19. The Human Rights Committee has held that the trial of civilians in military courts raises "serious problems as far as the equitable, impartial, and independent administration of justice"²⁸ is concerned. International standards provide that military courts lack the competence, independence, and impartiality to prosecute civilians and in principle should not be used except in strictly exceptional cases.²⁹ Resorting to military jurisdiction should be limited to military matters or personnel.³⁰
20. The Thai military justice system is separate and independent from the civilian justice system, accountable only to the Ministry of Defence, which is responsible for its administration.³¹ At the military court of first instance, only one of the three adjudicators must be a legally trained member of the Judge Advocate General's Office. The other two must be commissioned officers.³²
21. At the 28th Session of the HRC in March 2015, Thailand claimed, "On the use of the Martial Court, only a limited number of cases of those who are accused of committing serious offences are submitted to the Martial Court."³³ However, some individuals have been prosecuted in military courts for merely exercising their rights to freedom of assembly and expression. For example, military courts have convicted peaceful protestors for "violations" of the NCPO order prohibiting the political gathering of more than five people and for acts such as holding up anti-*coup* signs outside a Bangkok shopping mall³⁴ and in a McDonalds restaurant in Chiang Rai.³⁵
22. At the HRC, Thailand also claimed that, "Defendants before the military court are entitled to the same set of rights accorded to those who appear before an ordinary court. This includes the right to legal counsel and the right to be presumed innocent until proven guilty."³⁶ However, contrary to this assertion, there is no right of appeal for any crimes that were committed whilst martial law was in place, including appeals against conviction and bail refusals, in violation of a defendant's right to a fair trial and to liberty.³⁷
23. Further, in principle, civilian criminal procedures should apply in Thailand's military courts where there exist no military laws, rules and regulations.³⁸ In practice, TLHR and the ICJ have observed numerous procedural irregularities that raise fair trial concerns, including: the passage of several months before a copy of the indictment is provided to an accused; defence lawyers being prohibited from making copies of the court file, including of important orders such as those concerning bail; the failure of Judges to disclose their names in written decisions; the failure to make hearings accessible to the public in certain cases, including by an explicit order in *lèse majesté* cases or the fact the court is located on a secure military base or the small size of the courtroom; refusal to allow the public to take notes; and long administrative delays due to the inability of military court personnel to process the sharp increase in cases.
24. A representative of the Judge Advocate General has stated that the number of cases tried before military courts has doubled despite there being less than 100 judges and prosecutors.³⁹ Lawyers defending civilians in military courts have observed the average

length of the proceedings has increased in certain cases due to the time it takes the courts to conduct witness examinations and issue decisions. In one case, a civilian decided he would rather plead guilty than await the conclusion of his lengthy military trial.⁴⁰

25. In some cases the jurisdiction of Thai military courts over civilians has been challenged. In those cases, the courts have nonetheless ruled that they have jurisdiction over certain offences, citing Article 47 of the 2014 Interim Constitution as authority for the proposition that NCPO orders and announcements are legal, constitutional and final.⁴¹

Freedom of Expression and Assembly

26. Since the *coup*, the NCPO has used the new legal framework and pre-existing laws - including criminal defamation provisions, the sedition law, and the "crime" of *lèse majesté* - to punish human rights defenders and activists, giving rise to concerns about violations of their rights to freedom of expression and assembly. According to iLaw, as of 30 August 2015, approximately 262 individuals have been arrested for exercising their freedoms of expression and assembly.⁴² However, the total number nationwide is unknown, as the Government has not released official figures.

Criminal defamation

27. Numerous human rights defenders have faced criminal defamation lawsuits in Thailand, under articles 326 to 328 of the Thai Criminal Code. Criminal defamation under articles 326 and 327 carry a maximum sentence of one year's imprisonment whilst criminal defamation by "means of publication" under article 328 carries a sentence of up to two years' imprisonment.⁴³ If the alleged defamation is perpetrated through a computer system, defendants are sometimes also charged under article 14 the vaguely worded Computer Crimes Act, which carries a maximum sentence of five years' imprisonment.⁴⁴ The ICJ has called for Thailand's criminal defamation laws to be repealed.⁴⁵
28. Natural Fruit Company Ltd. has filed four criminal and civil defamation complaints against Andy Hall, a British human rights defender and labour researcher in Thailand working with a Finnish NGO, Finnwatch. In January 2013, Hall's findings were published in a Finnwatch report called *Cheap Has a High Price*.⁴⁶ The report alleged various human rights violations taking place at the company such as the confiscation of employees' passports; violence from guards and superiors; dangerous working conditions; child labour; and illegally low wages and overtime.⁴⁷ On 18 September 2015, the Thai Appeal Court dismissed one of the criminal defamation proceedings.⁴⁸ The other three proceedings are still before the courts (in one of the proceeding Hall is also charged with offences under the Computer Crimes Act).⁴⁹
29. In December 2013, the Royal Thai Navy lodged a criminal complaint against the editors of an online news website in Thailand, *Phuketwan*, for quoting a *Reuters* article that implicated "Thai naval forces" in the trafficking of Rohingya.⁵⁰ The two journalists were charged with criminal defamation and an offence under the Computer Crimes Act.⁵¹ Despite international pressure, including by the ICJ, to drop the charges,⁵² a three-day trial took place in July

2015. On 1 September 2015, the Court acquitted both accused on all counts, ruling, *inter alia*, that the Computer Crimes Act was not intended to be used in cases of defamation.⁵³ The prosecution had 30 days from the date of the decision to lodge an appeal, which had not expired at the time of this submission.⁵⁴

30. On 20 May 2014, the Royal Thai army filed a criminal complaint against human rights defender, Pornpen Khongkachonkiet, and her organization, Cross Cultural Foundation (CrCF), for "damaging the reputation" of the Paramilitary Unit in the deep South of Thailand after she wrote an open letter requesting an investigation into allegations that military personnel had beaten a man during arrest.⁵⁵ In August 2015, the police informed Pornpen Khongkachonkiet that the prosecutor has decided not to prosecute her.
31. At a preliminary hearing on 20 August 2015, a Court in Mae Sot indicted a community based human rights defender, Suraphan Rujichaiwat, from Loei Province, on charges of criminal defamation and violation of section 14(1) of the Computer Crimes Act. The case concerns the private prosecution of Rujichaiwat by a gold mining company, Tungkhum Company, which is in a dispute with the local community about the impact of its operations in the area.⁵⁶
32. While in some of these cases the prosecuting authorities or the Courts have eventually acted in manner consistent with the freedom of expression and opinion of the individuals concerned, the ICJ and TLHR remain concerned about the chilling effect that the continued existence of and resort to criminal defamation have on the rights to freedom of opinion and expression in the country.

Sedition law

33. NCPO announcement 37/2014, 38/2014 and 50/2014 expanded military court jurisdiction over civilians to include, *inter alia*, criminal proceedings related to article 116 of the Criminal Code. This provision criminalizes actions that aim to change the government, create unrest amongst people or cause people to transgress the law. It carries a maximum penalty of seven years' imprisonment. Since the *coup*, there has been an increase in the use of Article 116 to charge politicians,⁵⁷ human rights defenders⁵⁸ and students⁵⁹ who have peacefully gathered to express critical opinions towards the military government. At least 26 people have been arrested and some have been charged and are being prosecuted for violations of article 116⁶⁰ since the *coup*.
34. For example, on 3 July 2015, Baramee Chaiyarat, a board member of Amnesty International Thailand and coordinator of the Thai NGO, Assembly of the Poor, was summoned to the Samranrat Police Station in Bangkok following accusations against him made by a military officer.⁶¹ He was charged by police with sedition and violation of NCPO order No. 3/2015 (12), prohibiting a public gathering, in response to his public support, in June 2015, of a group of 14 students protesting against the *coup*.⁶² If the case proceeds to trial, it will be heard in a military court.

Lèse Majesté

35. Among those crimes now falling within the jurisdiction of the military court is *lèse majesté*, which states anyone who "defames, insults or threatens the king, the queen, the heir-apparent or the regent" will

be punished with up to 15 years in prison.⁶³ Since the *coup*, there have been at least 76 *lèse majesté* cases tried by military tribunals and ordinary civilian criminal courts,⁶⁴ a noted increase from before the *coup*. The recurrent human rights concerns to which *lèse majesté* proceedings have given rise include the denial of bail even in cases of persons suffering from serious medical conditions and the conduct of proceedings *in camera*.⁶⁵

36. Not only has there been an increase in the number of prosecutions for *lèse majesté*, but the length of prison sentences imposed in certain cases have lengthened recently too. On 7 August 2015, separate military courts in Bangkok and Chiang Mai sentenced a man and a woman to 30 and 28 years' imprisonment, respectively, following guilty pleas, for several Facebook posts deemed critical of the monarchy. OHCHR stated that these are the highest sentences imposed for *lèse majesté* since they began documenting them in 2006.⁶⁶ Prior to the guilty pleas, the Courts had envisaged sentencing the defendants to 60 and 56 years' imprisonment, respectively.

Stifling of human rights debate

37. In September 2014,⁶⁷ and again in June 2015⁶⁸, the NCPO prohibited TLHR from holding a public event to launch a report on the human rights situation after the *coup*. In June 2015, the authorities cancelled the public launch of a Human Rights Watch report⁶⁹ on the persecution in Vietnam of a Vietnamese ethnic minority, claiming it could damage national security and relations between the two countries.⁷⁰

Freedom of Assembly

38. The prohibition on public gatherings of more than five people for political purposes, imposed through NCPO announcement No. 7/2014 and, later, order No. 3/2015,⁷¹ has been used to harass and silence human rights defenders and activists. As of June 2015, according to iLaw, at least 209 individuals had been arrested for exercising their right to peaceful assembly since the *coup*.⁷²
39. On 22 May 2015, on the one-year anniversary of the *coup*, 38 students and activists were arrested for peacefully demonstrating in front of the Bangkok Art and Culture Center while another seven were arrested and charged with violating order 3/2015 in Khon Kaen, Northeastern Thailand.⁷³ They were released the following day. On 26 June 2015, the police and military officers arrested 14 students who had been protesting the arrests of 22 May 2015.
40. During the early hours of 27 June 2015, a Military Court ordered the 14 students be held in the custody of the Bangkok Remand Prison for 12 days. The students were released on 8 July 2015 and were charged with sedition and violation of NCPO order No. 3/2015. Furthermore, a lawyer from TLHR was intimidated and harassed while attempting to provide legal advice/assistance to the students.⁷⁴ A police investigation is ongoing and any decision to try those charged before a military court will be at the discretion of the military prosecutor.
41. On 9 July 2015, the National Legislative Assembly enacted the Act on Public Assembly, which came into effect on 12 August 2015. The Act places limitations on the exercise of the right to peaceful

assembly by imposing strict rules on locations allowed for public assembly; the term “organizer” is defined widely to include those who invite or make an appointment for others to participate in public assembly; and article 15 of the Act imposes duties on the organizer to be responsible for, among other things, ensuring that the public assembly is peaceful and free of weapons. Violations of the Act involve criminal sanctions with a maximum sentence of ten years’ imprisonment.

42. Local communities have also been fearful of holding non-political community gatherings in case the military either deliberately or mistakenly interprets them as being political. For example, one community engaged in resisting local gold mining in Northeast Thailand told the ICJ in June 2014 that the NCPO order banning political assembly had made them fearful of holding community events to discuss non-political community issues. In September 2015, the same community told the ICJ that when they planned on holding a non-political youth event in August 2015 the authorities threatened them with prosecution under the Act on Public Assembly.

Enforced disappearances

43. Emblematic of the problem of enforced disappearance in Thailand is the case of Somchai Neelapaijit, a prominent human rights defender from the deep South. Eyewitnesses recount seeing Somchai pulled from his car in Bangkok and taken away by five men on 12 March 2004. He has not been seen since.⁷⁵
44. In April 2004, the Criminal Court in Bangkok issued arrest warrants for five police officers allegedly involved in his abduction. Eventually, in January 2006, four police officers were acquitted and one was convicted of the minor crime of coercion, but, in March 2011, the Court of Appeal in Bangkok overturned his conviction. The case is still before the Supreme Court.⁷⁶ In 2005 the Department of Special Investigations (DSI) also opened an investigation into Somchai’s disappearance and is still investigating the case.⁷⁷
45. Another example of a suspected enforced disappearance is the case of Pholachi “Billy” Rakchongcharoen, a Karen minority human rights defender last seen on 17 April 2014 in the custody of Kaeng Krachan National Park Officials. Park officials admitted that they had detained Billy for “illegal possession of wild honey” but had released him the same day.⁷⁸ At the time of his “disappearance”, he had been working with Karen villagers and activists on legal proceedings concerning the alleged burning of villagers’ homes and property in the National Park in 2010 and 2011.
46. Following a six-day *habeas corpus* inquiry, the Court of First Instance, on 17 July 2014, concluded that it could not be established that Billy was still in detention when he had disappeared. Subsequent appeals of this decision to the Appeal and Supreme Courts have also failed to shed any light on Billy’s fate or whereabouts.⁷⁹
47. On 6 August 2015, Billy’s wife requested the DSI to open a special investigation into the case due to the lack of progress in the police investigation.⁸⁰ To date, the DSI has not opened a special investigation.

Torture and other ill-treatment

48. Many allegations of torture and other ill-treatment committed by police and the military are not investigated in an impartial and effective manner and, in other cases, while compensation is sometimes awarded, perpetrators are not brought to justice, thereby perpetuating impunity.
49. TLHR has documented at least 18 allegations of torture made following the *coup*.⁸¹ In September 2014, TLHR produced a report entitled “The Human Rights Situation 100 Days After The *Coup*”, which included 14 allegations of torture against detainees under martial law, and stated that they must be “must be investigated promptly, independently, and impartially.”⁸² The authorities replied to TLHR that the 14 complaints had been sent to the National Human Rights Commission of Thailand (NHRCT). The other four complaints were submitted directly to the NHRCT by the alleged victims’ families. To date, there has been no reported progress in any investigations into the 18 cases. The alleged victims are afraid to pursue their complaints because they are being prosecuted for criminal offences and many are still imprisoned and thus are afraid of reprisals.
50. In March 2015, TLHR requested the police to investigate allegations of torture of four accused allegedly involved in a hand-grenade attack on the Bangkok Criminal Court.⁸³ In May 2015, the Metropolitan Police Bureau responded to Sansern Sriounreun, one of the accused who made an allegation of torture, stating that the bruises on his body were likely to have been caused by falling on or hitting a blunt object; in light of this, Metropolitan Police Bureau had concluded that torture could not be established.⁸⁴ In July 2015, Sansern challenged the police’s finding and alleged that he was subjected to torture and ill-treatment by military officers who arrested and interrogated him during detention under martial law in March 2015, and requested a re-investigation.⁸⁵ There has been no progress with the investigation into these allegations. Another case concerns defendants allegedly involved in a grenade attack on a political demonstration in Trat, an eastern province of Thailand, in February 2014.⁸⁶ An allegation of torture was raised during the criminal proceedings but the court, rather than carrying out its own inquiry to see whether any evidence had been obtained by torture, instructed the defence lawyers to file a separate lawsuit.⁸⁷
51. In some cases, allegations of torture or ill-treatment are not investigated at all, contrary to Thailand’s obligations under the CAT and ICCPR.⁸⁸ One example is the case of Kritsuda Khunasen. On the evening of 28 May 2014, Khunasen, an active member of the United Front for Democracy against Dictatorship, the “Red Shirts”, was taken from her house during a nighttime raid by the Military. She was effectively “disappeared”. Not until 20 June did the military admit that they had detained her; however they refused to divulge her location.⁸⁹ She was released on 24 June, 29 days after her disappearance. She alleged that she had been blindfolded and bound for the first seven days of her detention, and that she had been physically and sexually assaulted. At no point while in detention was she brought before a judicial authority or allowed to communicate with her family, a doctor, or lawyer.⁹⁰ Thus far, there has been no substantive response to or investigation from the Thai Government into her case.

52. There are a number of cases where torture survivors or the families of those who have died have been compensated but the perpetrators have not been brought to justice. For example, the case of Imam Yapa Kaseng highlights this pattern. He was allegedly tortured and killed while in the custody of the military in March 2008.⁹¹ Following a mediation facilitated by the civil court, the family received 5.2 million Thai Baht in compensation. In August 2015, the National Anti-Corruption Committee (NACC), which opened an investigation in 2008, indicated that there were grounds for one officer to face a charge of serious disciplinary misconduct and malfeasance but that the evidence was not sufficient for the other four officers implicated.⁹² The NACC has sent the finding to the supervisor to consider a disciplinary action and to the Attorney General to consider whether to prosecute the case. To date, no prosecution has commenced and no perpetrators have been brought to justice.
53. Likewise, in another case, the Administrative Court ordered the Prime Minister's Office to pay Ashari Samaae's family half a million Thai Baht as Mr. Ashari was allegedly tortured and killed while in the custody of the military in July 2007. However, to date, no military officer or anybody else for that matter has been prosecuted in connection with his death.⁹³

International human rights instruments and mechanisms

54. Thailand is a party to a number of international human rights treaties.⁹⁴ However, it has yet to become a party to the following instruments:
- Optional Protocol to the International Covenant on Civil and Political Rights;
 - Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
 - Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
 - Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
 - International Convention for the Protection of all Persons from Enforced Disappearance (signed in 2012); and
 - Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Enforced disappearances and torture

55. Following the First UPR Cycle, Thailand pledged to "amend its laws to be more in alignment with international human rights instruments," including the CAT and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED),⁹⁵ to which it pledged to become a party.⁹⁶ While Thailand signed the ICPPED on 9 January 2012, it has not ratified it yet.⁹⁷ On 12 January 2015, the Draft Prevention and Suppression of Torture and Enforced Disappearance Act was presented to the Cabinet, but it has yet to be enacted into law.
56. The draft law defines torture, cruel, inhuman or degrading treatment and enforced disappearance in line with the CAT and the ICPPED and

provides criminal penalties commensurate with the seriousness of these offences. However, the draft fails to include measures necessary to prevent those who are suspected of having committed torture or enforced disappearance from influencing or hindering an investigation, as required by the ICPPED.

57. During the First UPR Cycle, Thailand pledged to issue a standing invitation to all special procedures of the HRC.⁹⁸ However, at the time of filing this submission, the authorities had failed to grant access to the country, notwithstanding pending requests to visit from both the Special Rapporteur on Torture (SRT) and the Working Group on Enforced and Involuntary Disappearances (WGEID).⁹⁹

RECOMMENDATIONS

58. In light of the above-mentioned concerns, the ICJ and TLHR consider that the Thai authorities should implement the following recommendations:

Legal and institutional framework

- i. Repeal or amend the interim Constitution consistent with Thailand's international human rights obligations, including as a matter of priority articles 44, 47 and 48 and take all necessary steps to ensure the reinstatement of a constitution that protects and promotes human rights;
- ii. End the prosecution of civilians in military courts, transfer all cases of civilians facing proceedings before military courts to civilian courts, order a retrial in civilian courts for all civilians convicted of an offence in military courts, and amend the martial law and the Military Court Act to prohibit the prosecution of civilians in military courts;
- iii. Amend or, where appropriate, repeal, all laws and NCPO orders and announcements, including as a matter of priority NCPO Orders No. 3/2015 and No. 5/2015 issued under Article 44 of the interim Constitution, which prevent the effective realization of human rights, including freedom of expression and assembly;
- iv. Repeal articles 326 to 328 of the Criminal Code, which criminalize freedom of expression, to ensure compliance with Thailand's international legal obligations;
- v. Amend article 14 of the Computer Crimes Act to ensure it cannot be used to prosecute cases of alleged defamation;
- vi. Amend article 112 of the Criminal Code to ensure it is consistent with Thailand's international legal obligations;
- vii. Take steps to ensure article 116 of the Criminal Code is not used to prosecute individuals for exercising their human rights including to freedom of expression and assembly;
- viii. Lift martial law and all other emergency rule measures, particularly article 44 of the interim Constitution and orders issued under that article, that are in place throughout Thailand and replace them, when necessary, with measures compliant with international human rights standards;
- ix. Apply procedures for arrest and detention that adhere to international human rights law and standards, including the requirement that all detained persons must be brought before a judge promptly, together with the right to challenge the lawfulness of the detention, including the conditions of detention;

Enforced disappearances and torture

- x. Carry out prompt, impartial and effective investigations into all alleged cases of enforced disappearance and torture and other ill-treatment, including those mentioned above;
- xi. Provide remedies and reparations to victims (and their families as relevant) and take all necessary steps to bring perpetrators to justice;

International human rights instruments and mechanisms

- xii. Ratify and implement into national law all international human rights treaties to which Thailand is not yet a party, including the ICPPED;
- xiii. Amend domestic legislation to ensure that it is consistent with Thailand's obligations, including, in particular, under CAT and the ICPPED; and
- xiv. Implement commitments made during the First UPR Cycle to accept visit requests of the Special Procedures of the HRC, including the SRT and the WGEID, and extend to them all reasonable cooperation and assistance to facilitate timely and effective country missions.

ENDNOTES

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