



**JOINT SUBMISSION OF  
THE INTERNATIONAL COMMISSION OF JURISTS AND  
THAI LAWYERS FOR HUMAN RIGHTS  
IN VIEW OF THE UN COMMITTEE AGAINST TORTURE'S ADOPTION OF A LIST  
OF ISSUES TO BE TRANSMITTED TO THE KINGDOM OF THAILAND PRIOR TO  
THE SUBMISSION OF ITS SECOND PERIODIC REPORT UNDER ARTICLE 19 OF  
THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR  
DEGRADING TREATMENT OR PUNISHMENT**

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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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**Joint Submission of the International Commission of Jurists and Thai Lawyers for Human Rights in view of the UN Committee against Torture's adoption of a List of Issues to be transmitted to the Kingdom of Thailand prior to the submission of its Second Periodic Report under Article 19 of the Convention Against Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment**

**Introduction**

1. During its 63<sup>rd</sup> Session, from 23 April 2018 to 18 May 2018, the UN Committee against Torture (hereafter 'the Committee') will prepare and adopt a List of Issues (known as list of issues prior to reporting – hereafter 'LOIPR') to be transmitted to the Kingdom of Thailand (hereafter 'Thailand'), prior to the submission by the State party of its 2<sup>nd</sup> Periodic Report under Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter 'the Convention') with a view to assisting Thailand in the preparation of the said report, which, in turn, will form the basis of the Committee's review of the country's implementation of and compliance with provisions of the Convention. The International Commission of Jurists (ICJ) and Thai Lawyers for Human Rights (TLHR) welcome the opportunity to contribute to the Committee's preparation of its LOIPR on Thailand.
2. In this submission, the ICJ and TLHR focus on the following principal issues, arising in connection with Thailand's compliance with and implementation of its obligations under Articles 2, 4, 5, 6, 11, 12, 13, 14 and 16 of the Convention:
  - Constitutional and legal framework within which the Convention is implemented;
  - Definition and criminalization of torture, cruel, inhuman or degrading treatment or punishment (hereafter 'other ill-treatment') and enforced disappearance;
  - Allegations of widespread use of torture and other ill-treatment;
  - Enforced disappearance; and
  - Threats and reprisals against persons working to bring to light cases of alleged torture, other ill-treatment and enforced disappearance.

**Constitutional and legal framework within which the Convention is implemented**

3. In April 2014, the ICJ highlighted in its submission to the Committee that three special security laws – namely Martial Law Act B.E. 2457 (1914) (hereafter 'Martial Law')<sup>1</sup>, the Decree on Public Administration in Emergency Situations B.E. 2548 (2005) (hereafter 'Emergency Decree')<sup>2</sup> and the Internal Security Act B.E. 2551 (2008) (hereafter 'ISA')<sup>3</sup> – in force in Thailand, including in the four

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<sup>1</sup> Martial law was already in force in 31 provinces and 185 districts of Thailand's 77 provinces, including most of the provinces along Thailand's border with Myanmar, Lao PDR, Cambodia, and Malaysia, and three southernmost provinces of Pattani, Yala and Narathiwat.

<sup>2</sup> The Emergency Decree has been enforced in the three southernmost provinces since 2005. For more information, see ICJ, 'Implementation of Thailand's emergency decree', July 2007, <https://www.icj.org/thailand-implementation-of-thailand%C2%B4s-emergency-decree/>

<sup>3</sup> The ISA replaced Martial Law in enforcement in four districts of Songkhla: Jana, Tepha, Natawee, Sabayoi (not including Sadao) since December 2010 and in the Mae Lan district of Pattani since January 2011. The Emergency Decree and the ISA have also been used in Bangkok and surrounding provinces when certain political protests took place in 2008, 2009 to 2010 and 2012 to 2013. For more information, see ICJ, 'Thailand's Internal Security Act: risking the rule of law?', February 2010, <http://www.icj.org/thailandsinternal-security-act-risking-the-rule-of-law>

southern most provinces,<sup>4</sup> provided for wide executive powers of administrative detention without sufficient judicial supervision, and established a framework that could provide impunity for perpetrators of torture, other ill-treatment and enforced disappearance.<sup>5</sup>

4. In its Concluding Observations on the initial report of Thailand in 2014 (hereafter 'Concluding Observations'), the Committee expressed deep concern at the "declaration of martial law throughout Thailand", urging Thailand to ensure that rights under the Convention be protected "under any circumstances" and emphasizing that, "the conditions for ... enacting emergency laws are strictly and narrowly defined and should be limited to exceptional circumstances".<sup>6</sup>
5. These special laws remain in force throughout the country, and have not been reviewed or repealed in line with Thailand's obligations under the Convention, contrary to the Committee's recommendations in its Concluding Observations.<sup>7</sup>
6. Quite the reverse: significant changes in the constitutional and legal framework since the military *coup d'état* of 22 May 2014 have increased opportunities for legally-sanctioned impunity.<sup>8</sup> The National Council for Peace and Order (hereafter 'NCPO'), the governing body established by the Thai military after the *coup*, dissolved the civilian government, suspended the 2007 Constitution,<sup>9</sup> and progressively imposed military rule across the country through nationwide implementation of Martial Law.<sup>10</sup> Martial Law was later lifted in most areas of the country on 1 April 2015, but it was replaced with draconian NCPO orders.<sup>11</sup> These orders are nearly all still in place at the time of writing this submission.
7. The Head of the National Council for Peace and Order (hereafter 'HNCPO') Order No. 51/2560, promulgated on 22 November 2017, amended the ISA expanding the Internal Security Committee's powers at the regional and provincial level. These powers include: the power to integrate, coordinate, support, and determine 'appropriate' measures in implementing 'Internal Security Plans' at regional and provincial levels;<sup>12</sup> and broader powers to manage, integrate and evaluate efforts towards maintaining 'internal security' within regions and provinces, a concept that was already not clearly defined in the ISA.<sup>13</sup>

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<sup>4</sup> Thailand's southernmost provinces – namely Pattani, Yala, Narathiwat, and four districts of Songkhla: Jana, Tepha, Natawee, Sabayoi, are predominantly populated by ethnically Malay Muslims. The simmering resistance against incorporation into Thailand erupted into an armed insurgency in 2004, resulting in more than 6,000 people having been killed since then.

<sup>5</sup> See ICJ, 'Submission to the UN Committee Against Torture in view of the Committee's examination of Thailand's initial report under Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', April 2014, [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/THA/INT\\_CAT\\_NGO\\_THA\\_17107\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/THA/INT_CAT_NGO_THA_17107_E.pdf)

<sup>6</sup> Committee against Torture, 'Concluding Observations on the initial report of Thailand', UN Doc. CAT/C/THA/CO/1, 20 June 2014, paras 4, 11.

<sup>7</sup> Ibid, para 12.

<sup>8</sup> ICJ, 'A reckless coup in Thailand', 23 May 2014, <http://www.icj.org/a-reckless-coup-in-thailand/>; ICJ, 'Thailand: ICJ condemns military coup', 22 May 2014, <http://www.icj.org/thailand-icj-condemns-military-coup/>

<sup>9</sup> The 2007 Constitution was suspended, leaving in force only the Chapter that governs the Monarchy.

<sup>10</sup> ICJ, 'Thailand: authorities must revoke Martial Law, restore media freedom', 20 May 2014, <http://www.icj.org/thailand-authorities-must-revoke-martial-law-restore-media-freedom/>

<sup>11</sup> On 2 April 2015, the UN High Commissioner for Human Rights responded to the replacement of Martial Law stating, "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." See OHCHR, 'UN Human Rights Chief alarmed by Thai Government's adoption of potentially unlimited and "draconian" powers', 2 April 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15793>

<sup>12</sup> Sections 11/2(2),(3) and 13/2(2).

<sup>13</sup> Sections 11/2 (1) and 13/2 (1).

### 2014 interim Constitution and 2017 Constitution

8. On 22 July 2014, the NCPO promulgated an interim Constitution (hereafter '2014 interim Constitution') giving the NCPO sweeping and unfettered powers inconsistent with the rule of law, including provisions (i.e. sections 44, 47 and 48 of the 2014 interim Constitution) that explicitly grant the NCPO immunity from judicial review and prevent accountability for human rights violations, including acts of torture or other ill-treatment.<sup>14</sup>
9. Section 44 of the 2014 interim Constitution gives the Head of the NCPO absolute power to establish any order deemed necessary "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". Section 44 provides that any order made under the section "is deemed to be legal, constitutional and conclusive".<sup>15</sup>
10. Section 47 ensures that all NCPO announcements and orders made from the time of the *coup*, "regardless of their legislative, executive or judicial force", are also "deemed to be legal, constitutional and conclusive".
11. Section 48 dictates that acts of the NCPO in relation to the *coup* and acts of persons connected to such acts, where these acts "constitute offences under the laws", "the persons who commit those acts shall be entirely discharged from such offences and liabilities".
12. On 6 April 2017, His Majesty King Maha Vajiralongkorn enacted the Constitution of the Kingdom of Thailand (hereafter '2017 Constitution'). In contravention of the rule of law, under sections 265 and 279,<sup>16</sup> the 2017 Constitution retains the powers the 2014 interim Constitution granted to the Head of the NCPO, Prime Minister General Prayuth Chan-o-cha, and the NCPO under the above-mentioned sections 44, 47 and 48.

### Martial Law and its replacements: HNCPO Orders No. 3/2558 and 13/2559

#### *HNCPO Order No. 3/2558*

13. On 1 April 2015, the NCPO lifted Martial Law from most provinces in Thailand, retaining its enforcement only in areas where it had already been imposed prior to military *coup* in May 2014. After lifting Martial Law, however, the Head of the NCPO invoked section 44 of the 2014 interim Constitution and issued HNCPO Order No. 3/2558 extending many powers of the military under Martial Law to appointed "Peace and Order Maintenance Officers", who are also members of the Thai military.<sup>17</sup> Actions taken under HNCPO Order No. 3/2558 are immune from judicial review, and Peace and Order Maintenance Officers and "Assistant Peace and Order Maintenance Officers" who have acted in "good faith" in a "proportionate and necessary manner" without "discrimination" are not subject to

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<sup>14</sup> ICJ, 'Thailand: interim Constitution seems to ignore key pillars of rule of law', 24 July 2014, <https://www.icj.org/thailand-interim-constitution-seems-to-ignore-key-pillars-of-rule-of-law/>

<sup>15</sup> Unofficial translation of Constitution of the Kingdom of Thailand (Interim)(2014) by the Foreign Law Bureau, Office of the Council of State.

[http://web.krisdika.go.th/data/outside/outside21/file/Constitution\\_of\\_the\\_Kingdom\\_of\\_Thailand\\_\(Interim\),B.E.2557\\_\(2014\).pdf](http://web.krisdika.go.th/data/outside/outside21/file/Constitution_of_the_Kingdom_of_Thailand_(Interim),B.E.2557_(2014).pdf)

<sup>16</sup> Unofficial translation of Constitution of the Kingdom of Thailand (2017) by Legal Opinion and Translation Section, Foreign Law Division, Office of the Council of State.

[http://www.constitutionalcourt.or.th/occ\\_en/download/article\\_20170410173022.pdf](http://www.constitutionalcourt.or.th/occ_en/download/article_20170410173022.pdf)

<sup>17</sup> TLHR, 'Order of the Head of NCPO No. 5/2015 (5/2558)', 16 April 2015, [https://tlhr2014.wordpress.com/2015/04/16/tlhr-update\\_order-of-the-head-of-ncpo-no-5-2015/](https://tlhr2014.wordpress.com/2015/04/16/tlhr-update_order-of-the-head-of-ncpo-no-5-2015/)

criminal, civil and administrative liabilities.<sup>18</sup>

14. In cases where, according to the discretion of Peace and Order Maintenance Officers, "there is a reasonable cause to suspect, with appropriate evidence" that a person has committed certain crimes, namely, *lèse-majesté* offences, offences against internal security, offences in violation of the law on firearms and offences in violation of NCPO announcements or orders, Peace and Order Maintenance Officers wield the power to summon 'suspects' to report to them for questioning. 'Suspects' are also liable to be detained for up to seven days in unrecognized places of detention without judicial oversight.<sup>19</sup>

*HNCPO Order No. 13/2559*

15. On 29 March 2016, the Head of the NCPO issued HNCPO Order No. 13/2559 granting military officials, who are designated as "Prevention and Suppression Officers" and their assistants, drawn from the commissioned ranks of the Armed Forces, including paramilitary Ranger Volunteers, with wide-ranging powers to prevent and suppress 27 categories of "crimes", including "crimes violating public peace, liberty and reputation", and "concerning immigration, human trafficking, narcotics and weapons". Prevention and Suppression Officers are granted extensive powers, including powers to arrest, detain and search suspects without a warrant, and to hold individuals in places not officially recognized as places of detention for up to seven days. Under HNCPO Order No. 13/2559, their actions are exempt from judicial review, and Prevention and Suppression Officers and their assistants who have acted in "good faith" in a "proportionate and necessary manner" without "discrimination" are not subject to criminal, civil and administrative liabilities.<sup>20</sup>
16. The ICJ and TLHR are deeply concerned that the abovementioned laws enacted after the *coup* to purportedly maintain 'peace and order' and 'national security' may result in the invocation of exceptional circumstances to justify the failure to ensure the drawing up and implementation of an effective legislative framework, as well as the absence of administrative, judicial or other measures to prevent acts of torture, other ill-treatment and enforced disappearance.
17. The aforementioned laws have resulted in the granting of wide-ranging law enforcement powers to military officers, empowering them to arrest and administratively detain individuals without any adequate judicial supervision. Preventive detention and other forms of administrative detention are generally prohibited under international law, including because such measures typically expose detainees to a heightened risk of torture and other ill-treatment and to enforced disappearances.<sup>21</sup>
18. The ICJ and TLHR are also concerned that existing laws enacted after the *coup* may provide impunity for perpetrators of serious human rights violations, namely military officers protected under the 2014 interim Constitution and 2017 Constitution, under HNCPO Orders No. 3/2558 and No. 13/2559, including with respect to acts of torture, other ill-treatment and enforced disappearances.
19. In its Concluding Observations on the second periodic report of Thailand under the International Covenant on Civil and Political Rights (ICCPR) in 2017 (hereafter 'ICCPR Concluding Observations'), the Human Rights Committee

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<sup>18</sup> Articles 13 and 14 of HNCPO Order No. 3/2558 and Article 17 of the Decree on Public Administration in Emergency Situations 2005.

<sup>19</sup> Article 4 of HNCPO Order No. 3/2558.

<sup>20</sup> Articles 8 and 9 of HNCPO Order No. 13/2559 and Article 17 of the Decree on Public Administration in Emergency Situations 2005.

<sup>21</sup> See ICJ, 'Submission to the Committee Against Torture in view of the Committee's Examination of Thailand's Initial Report', April 2014, p1.

(hereafter 'HR Committee') recommended, inter alia, that Thailand: (i) "review" the 2014 interim Constitution, "in particular sections 44, 47 and 48" and the 2017 Constitution, "including section 279", to ensure compliance with international human rights law<sup>22</sup>; (ii) "amend criteria with a view to lifting the Martial Law and Emergency Decree in the provinces currently under them without undue delay"<sup>23</sup>; and (iii) "amend" the Martial Law, the Emergency Decree and HNCPO Order No. 3/2558 to "ensure that they comply with all the provisions of the (ICCP), including with guarantees against incommunicado detention".<sup>24</sup>

20. On 17 January 2018, following a call from a civil society network to annul 35 orders and announcements issued by the NCPO, including HNCPO Orders No. 3/2558 and No. 13/2559, Prime Minister General Prayuth Chan-o-cha responded that he would look into the matter. He stated that matters needed to be "considered carefully before a decision is made on who has gained or lost as a result of the orders and announcements", and that, "it is important to determine the intentions behind the issuance".<sup>25</sup>

21. In light of the above, the ICJ and TLHR recommend that the following questions be included in the LOIPR for the examination of Thailand:

- ***Please explain how the current constitutional and legal framework, namely sections 44, 47 and 48 of the 2014 interim Constitution retained by sections 265 and 279 of the 2017 Constitution, HNCPO Order No. 3/2558 and HNCPO Order No. 13/2559, are consistent with Thailand's obligations under the Convention, including, in particular, under Article 2 of the Convention.***
- ***Please clarify what steps the State party has taken with a view to ensuring the reinstatement of a Constitution that complies with Thailand's obligations under the Convention, including, if any, the time frame to repeal or amend the 2017 Constitution, and, as a matter of priority, in particular, sections 265 and 279 of the 2017 Constitution, as well as HNCPO Order No. 3/2558 and HNCPO Order No. 13/2559.***
- ***Please clarify what steps the State party has taken under section 279 of the 2017 Constitution towards enacting legislation to repeal or amend orders and announcements by the NCPO and the Head of the NCPO that are inconsistent with Thailand's obligations under the Convention, namely HNCPO Order No. 3/2558 and HNCPO Order No. 13/2559.***
- ***Please provide detailed information on the steps taken, if any, by the State party to implement the Committee's recommendation in its Concluding Observations to review the special laws and repeal the laws, or relevant provisions, that are incompatible with its obligations under the Convention.***
- ***Please provide detailed information on steps taken, if any, by the State party to ensure in the current constitutional framework and existing national legislation the implementation of the Committee's***

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<sup>22</sup> Human Rights Committee, 'Concluding Observations on the second periodic report of Thailand', UN Doc. CCPR/C/THA/CO/2, 25 April 2017, para 8.

<sup>23</sup> Human Rights Committee, 'Concluding Observations on the second periodic report of Thailand', UN Doc. CCPR/C/THA/CO/2, 25 April 2017, para 22(d).

<sup>24</sup> Ibid.

<sup>25</sup> Bangkok Post, 'PM to review S44 orders, search for 'Thai democracy'', 17 January 2018, [https://www.bangkokpost.com/news/politics/1396966/pm-to-review-s44-orders-search-for-thai-democracy?utm\\_source=bangkokpost.com&utm\\_medium=article\\_news&utm\\_campaign=most\\_recent\\_bottom\\_box](https://www.bangkokpost.com/news/politics/1396966/pm-to-review-s44-orders-search-for-thai-democracy?utm_source=bangkokpost.com&utm_medium=article_news&utm_campaign=most_recent_bottom_box)

***recommendation to ensure fundamental legal safeguards for detainees from the outset of deprivation of liberty throughout the period of detention.***

**Definition and criminalization of torture, other cruel, inhuman or degrading treatment or punishment and enforced disappearance**

22. Domestic legislation recognizing torture and other ill-treatment as criminal offences, in accordance with articles 2, 4 and 16 of the Convention, has not been enacted.
23. In its Concluding Observations, the Committee expressed serious concern that definitions of torture and enforced disappearance were absent from Thailand's national legislation; that torture was not criminalized "in accordance with the Convention, in the State party's legal system"; and that there was still no "recognition of enforced disappearance as an offence in domestic legislation".<sup>26</sup>
24. In its Concluding Observations, the HR Committee urged Thailand to "expeditiously enact a law on the prevention and suppression of torture and enforced disappearances", "in particular prohibiting torture and enforced disappearance in accordance with... international standards".<sup>27</sup>
25. While section 28(4) of the 2017 Constitution prohibits acts of torture and other ill-treatment, and section 135 of Thailand's Criminal Procedure Code prohibits an authorized officer from performing or causing the performance of an act of "...threatening, ... torturing, forcibly compelling, or, by unlawful means, encouraging a person to give any statement in respect of a charge against him" during the interrogation of an individual, neither of the laws contains a definition of torture in line with article 1 of the Convention.
26. On 27 December 2016, a Bill titled the 'Draft Prevention and Suppression of Torture and Enforced Disappearance Act' (hereafter 'Draft Act'), which had been drafted in consultation with several non-governmental organizations, including the ICJ,<sup>28</sup> and whose adoption would criminalize torture and enforced disappearance, was submitted to Thailand's legislative body, the National Legislative Assembly (hereafter 'NLA'), for its consideration.<sup>29</sup> However, on 28 February 2017, the UN Office of the High Commissioner for Human Rights (OHCHR) announced that it had been informed that the NLA would not enact the Draft Act. Then, on 1 March 2017, it was reported that the Draft Act would be returned to the Thai Cabinet "for more consultations... with Interior officials,

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<sup>26</sup> Committee against Torture, 'Concluding Observations on the initial report of Thailand', UN Doc. CAT/C/THA/CO/1, 20 June 2014, paras 9, 14.

<sup>27</sup> Human Rights Committee, 'Concluding Observations on the second periodic report of Thailand', UN Doc. CCPR/C/THA/CO/2, 25 April 2017, para 20.

<sup>28</sup> ICJ and AI, 'Joint Statement – Thailand: Prioritize the amendment and passage of legislation on torture and enforced disappearances', 9 March 2017, <https://www.icj.org/thailand-prioritize-the-amendment-and-passage-of-legislation-on-torture-and-enforced-disappearances/>; Human Rights Watch, 'Thailand: Finalize Disappearances Convention', 13 March 2017, <https://www.hrw.org/news/2017/03/13/thailand-finalize-disappearances-convention>; Human Rights Watch, 'Thailand: Fulfill Pledge to End Torture', 26 June 2017, <https://www.hrw.org/news/2017/06/26/thailand-fulfill-pledge-end-torture>.

<sup>29</sup> ICJ and TLHR, 'Joint Submission to the Human Rights Committee in advance of the examination of the Kingdom of Thailand's Second Periodic Report under Article 40 of the International Covenant on Civil and Political Rights', 6 February 2017, para 27.

police authorities, the national security sector, military authorities and prosecutors.”<sup>30</sup>

27. On 2 March 2017, the Director-General of the Rights and Liberties Protection Department of Thailand’s Ministry of Justice, Ms. Pitikan Sithidej, reportedly affirmed the Thai Government’s commitment towards criminalizing acts of torture and enforced disappearance. Ms. Pitikan, however, made no mention of the time frame envisaged to do so. She reportedly stated that the Draft Act had been sent back “for improvement”, and that enactment into law required “careful consideration and appropriateness”.<sup>31</sup>
28. At the UN Human Rights Committee’s review of Thailand’s compliance with the ICCPR in March 2017, Thailand’s delegation confirmed that the Draft Act “had been submitted to the NLA, which had requested the Cabinet to further review the bill, with a view to introducing amendments and launching a public consultation process.”<sup>32</sup> However, there was no response to a question asked about the time frame within which Thailand would enact the Draft Act.<sup>33</sup> There was also no mention of a time frame in the delegation’s Additional Written Response provided to the Committee 48 hours after the end of the session.<sup>34</sup>
29. With no indication of a time frame and no legally stipulated time limit within which the Cabinet has to review the Draft Act, the NLA has effectively delayed the enactment into law of this legislation indefinitely. In an open letter to the Thai Government on 30 August, the ICJ, TLHR and other civil society organizations noted that this delay, purportedly to conduct a public consultation, was unnecessary as public consultations had already been extensively conducted, and the Draft Act was in an advanced stage of drafting.<sup>35</sup>
30. On 23 November 2017, the ICJ and Amnesty International submitted recommendations to the Ministry of Justice urging certain amendments to the Draft Act before its passage into law to address the following concerns:
  - “(i) the absence within the Draft Act of key elements of the crimes of torture and enforced disappearance, as defined by international law;
  - (ii) the absence of provisions concerning cruel, inhuman and degrading treatment or punishment (CIDT/P);
  - (iii) the inadequacy of provisions establishing the inadmissibility of statements and other information obtained by torture, CIDT/P and enforced disappearance as evidence in legal proceedings;
  - (iv) the inadequacy of provisions relating to modes of liability for crimes described in the Draft Act; and
  - (v) Shortcomings in provisions concerning safeguards against torture, CIDT/P and

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<sup>30</sup> BBC Thai, ‘NLA clarifies its case after UN announced it was “disappointed” that Thailand rejects the Draft Enforced Disappearance Act’, 1 March 2017, <http://www.bbc.com/thai/thailand-39127371>

<sup>31</sup> Khaosod English, ‘Anti-torture bill not quashed, senior justice official says’, 2 March 2017, <http://www.khaosodenglish.com/politics/2017/03/02/anti-torture-bill-not-quashed-senior-justice-official-says/>

<sup>32</sup> UN Human Rights Committee, ‘Consideration of reports submitted by States parties under article 40 of the Covenant - Second periodic report of Thailand’ (continued), 119<sup>th</sup> Session, CCPR/C/SR.3350, 22 March 2017, para 5.

<sup>33</sup> UN Human Rights Committee, ‘Summary record of the 3349th meeting’, 119th session, CCPR/C/SR.3349, 22 March 2017, para 27.

<sup>34</sup> See Delegation of Thailand, ‘Additional written response to the Human Rights Committee’, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fAIS%2fTHA%2f27271&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fAIS%2fTHA%2f27271&Lang=en)

<sup>35</sup> ICJ, Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), TLHR and the Cross Cultural Foundation, ‘Open Letter to the Thai government, ‘International Day of the Victims of Enforced Disappearances’’, 30 August 2017, p4, <https://www.ici.org/wp-content/uploads/2017/08/Thailand-ED-Day-letter-Advocacy-open-letters-2017-ENG.pdf>



enforced disappearances.”<sup>36</sup>

31. In any event, because of the constitutional and legal framework in force since the *coup* of 22 May 2014, including the HNCPO Orders described above, it is likely that even if the Draft Act is enacted, alleged perpetrators of the crimes of torture, other ill-treatment and enforced disappearance who are members or agents of the NCPO would benefit from immunity from prosecution.<sup>37</sup>
32. In light of the above, the ICJ and TLHR recommend that the following questions be included in the LOIPR for the examination of Thailand:
  - ***Please clarify the time frame for enactment of the Draft Act.***
  - ***Please indicate efforts, if any, which have been made to address the shortcomings in the Draft Act that were raised by the NLA and non-governmental organizations, including the ICJ, TLHR and Amnesty International.***
  - ***Please clarify whether, upon enactment of the Draft Act, perpetrators of the crimes of torture, other ill-treatment and enforced disappearance, who are members or agents of the NCPO, will benefit from immunity from prosecution under the current constitutional framework and NCPO Orders.***

#### **Allegations of widespread use of torture and other ill-treatment**

33. Allegations of torture and other ill-treatment, as well as cases of deaths in custody where there are credible allegations that the fatalities have been caused by acts of torture or other ill-treatment, are often not investigated in a prompt, effective, independent and impartial manner.
34. In its Concluding Observations, the Committee expressed serious concern regarding “continued allegations of widespread torture and ill-treatment of detainees” and called upon Thailand, “in view of widespread impunity”, to “take all necessary measures to ensure that all allegations of torture or ill-treatment are promptly, thoroughly and impartially investigated by a fully independent civilian body” with a view to ensuring due prosecution of perpetrators.<sup>38</sup>
35. In its Concluding Observations, the HR Committee also urged Thailand to ensure that “all allegations and complaints concerning the unlawful and excessive use of force by law enforcement officials and the military, ... including in the context of the southern border provinces” be promptly, impartially and thoroughly investigated.<sup>39</sup> The HR Committee further urged Thailand to “promptly set up an independent mechanism for the prevention and suppression of torture and enforced disappearances”.<sup>40</sup>

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<sup>36</sup> ICJ and Amnesty International, ‘Thailand: ICJ, Amnesty advise changes to proposed legislation on torture and enforced disappearances’, 23 November 2017, <https://www.icj.org/thailand-icj-amnesty-advise-changes-to-proposed-legislation-on-torture-and-enforced-disappearances/>

<sup>37</sup> See section on ‘Constitutional and legal framework within which the Convention is implemented’.

<sup>38</sup> Committee against Torture, ‘Concluding Observations on the initial report of Thailand’, UN Doc. CAT/C/THA/CO/1, 20 June 2014, paras 10, 15.

<sup>39</sup> Human Rights Committee, ‘Concluding Observations on the second periodic report of Thailand’, UN Doc. CCPR/C/THA/CO/2, 25 April 2017, para 22(a).

<sup>40</sup> Human Rights Committee, ‘Concluding Observations on the second periodic report of Thailand’, UN Doc. CCPR/C/THA/CO/2, 25 April 2017, para 22(e).

Failure to conduct prompt, effective, independent and impartial investigation into allegations of torture and ill-treatment

36. TLHR has documented at least 18 cases where credible allegations of torture and other ill-treatment of individuals detained after the *coup* under Martial Law were made.<sup>41</sup> In September 2014, TLHR produced a report that documented 14 cases of alleged torture of persons held under Martial Law, calling for these allegations to be “investigated promptly, independently and impartially.”<sup>42</sup> Following the report, the authorities informed TLHR that the National Human Rights Commission of Thailand (hereafter ‘NHRCT’) had been notified of these 14 cases. In May 2016, TLHR received a NHRCT report, dated 24 November 2015, which stated that there was insufficient medical and forensic evidence to confirm the commission of acts of torture. The NHRCT noted that obstacles in accessing evidence in a timely manner and lack of cooperation of relevant authorities had hampered its investigations. The report also highlighted that the power under Martial Law to detain individuals for up to seven days without disclosing their whereabouts heightened the risk of torture for those detained.<sup>43</sup>
37. Other non-governmental organizations released reports in 2016 on alleged cases of torture and other ill-treatment, all calling on the Thai Government to conduct prompt, effective and impartial investigations into such cases. An Amnesty International report documented, between 2014 and 2015, 74 allegations of torture and other ill-treatment by military and police officers in Thailand<sup>44</sup>; a report by Cross-Cultural Foundation, Duayjai and Patani Human Rights Organization documented, between 2014 and 2015, 54 cases where torture allegations<sup>45</sup> had been made in connection with the detention of persons in the custody of security officers in the southern border provinces,<sup>46</sup> and a report by the Muslim Attorney Centre documented 33 alleged cases of torture and ill-treatment of “insurgent suspects” arrested and detained under special security laws in the southern border provinces in 2015.<sup>47</sup>
38. On 26 June 2017, the Director-General of the Rights and Liberties Protection Department under the Ministry of Justice reportedly stated that its department had received 37 cases disclosing allegations of torture, of which 12 had been settled.<sup>48</sup>
39. Certain allegations of torture and other ill-treatment appear not to have been investigated at all. One such case is that of Ms. Kritsuda Khunasen, a political activist, who was removed from her house in the evening of 28 May 2014 and

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<sup>41</sup> TLHR, ‘Human Rights One Year After the 2014 Coup: A Judicial Process in Camouflage Under the National Council for Peace and Order’, [https://tlhr2014.files.wordpress.com/2015/06/20150604\\_tlhr-report-human-rights-one-year-after-the-2014-coup.pdf](https://tlhr2014.files.wordpress.com/2015/06/20150604_tlhr-report-human-rights-one-year-after-the-2014-coup.pdf); See also ICJ and TLHR, ‘Joint Submission to the Human Rights Committee in advance of the examination of the Kingdom of Thailand’s Second Periodic Report under Article 40 of the International Covenant on Civil and Political Rights’, 6 February 2017, pp 7 to 8.

<sup>42</sup> TLHR, ‘The Human Rights Situation 100 Days after the Coup d’Etat’, <https://tlhr2014.files.wordpress.com/2015/01/all-en-tlhr-100-days-human-rights-report.pdf>

<sup>43</sup> Ibid.

<sup>44</sup> Amnesty International, ‘Make Him Speak by Tomorrow: Torture and other ill-treatment in Thailand’, 28 September 2016, <https://www.amnesty.org/en/documents/asa39/4747/2016/en/>.

<sup>45</sup> The report was rejected by the ISOC Region 4 Forward Command, which stated that the allegations were not well-founded and that only 18 out of 54 alleged torture victims could be identified. See para 73 below.

<sup>46</sup> Cross-Cultural Foundation, Duayjai and Patani Human Rights Organization, ‘Torture and ill-treatment in Thailand’s Deep South’ in *Torture, Asian and Global Perspectives*, April 2016, Vol. 15 No. 2 to 3, [http://alrc.asia/article2/wp-content/uploads/2016/08/A2\\_V15-N2-final.pdf](http://alrc.asia/article2/wp-content/uploads/2016/08/A2_V15-N2-final.pdf)

<sup>47</sup> Prachatai English, ‘Torture of Malay Muslims reportedly still rampant in Deep South’, 3 February 2016, <https://prachatai.com/english/node/5825>

<sup>48</sup> Komchadluek, ‘Thailand did not neglect 82 cases on Enforced disappearance’, 26 June 2017, <http://www.komchadluek.net/news/regional/284642>

effectively forcibly disappeared before being released on 24 June 2014. She alleged that she had been physically and sexually assaulted during that time. To date, there has been no effective, independent or impartial investigation of her case, and the Thai authorities have not provided any substantive response to her allegations.<sup>49</sup>

40. Another case is that of Mr. Sansern Sriounreun, one of four accused persons allegedly involved in a hand-grenade attack on the Bangkok Criminal Court, who was detained under Martial Law in March 2015.<sup>50</sup> In May 2015, in response to Mr. Sansern's allegations of torture through repeated beatings and electrocutions, the Metropolitan Police Bureau stated that bruises apparent on his body were likely to have been caused by a fall or from the impact of a blunt object, and that his allegations were unfounded.<sup>51</sup> Despite Mr. Sansern's request for his case to be re-investigated, no progress has been reported.
41. On 25 March 2015, it was reported that the NHRCT was refused permission to visit Mr. Sansern in prison. NHRCT personnel and staff from the Forensic Medicine and Investigations Department of the Ministry of Justice had reportedly sought to visit him in prison after they had received an anonymous complaint that he had been beaten up and tortured by prison officers.<sup>52</sup>
42. On 8 June 2015, the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment addressed a joint Communication to Thailand seeking information on, *inter alia*, the "legal grounds of arrest and detention" of Mr. Sansern and three other persons, and whether "medical examinations, investigations, judicial or other inquiries" had been conducted in response to the allegations of torture and other ill-treatment.<sup>53</sup> TLHR and the ICJ understand that the Thai Government has thus far not responded to this Communication.
43. Mr. Bilal Mohammad, also known as Adem Karadag, an Uighur man suspected of involvement in a bomb attack on Erawan Shrine in 2016 claimed that he had been tortured and otherwise mistreated while in military detention at Nakhon Chaisri Military Base. On 23 August 2016, it was reported that during a preliminary session of the Bangkok Military Court, a witness from the Department of Corrections testified to the Court that it had undertaken an investigation concerning Adem Karadag's allegations of ill-treatment, but that the Department had found such allegations to be unfounded. The Bangkok Military Court then ruled to reject Adem Karadag's allegations of torture and ill-treatment on the basis that his claims were found to be false, and ruled that he and another suspect in the same case would remain in military detention as it was "a case of national security".<sup>54</sup>

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<sup>49</sup> ICJ, 'Thailand: allegations of torture against activist Kritsuda Khunasen require immediate investigation', 4 August 2014, <https://www.icj.org/thailand-allegations-of-torture-against-activist-kritsuda-khunasen-require-immediate-investigation/>

<sup>50</sup> The Nation, 'Police told of bomb plots by red shirts', 9 March 2015, <http://www.nationmultimedia.com/politics/Police-told-of-bomb-plots-by-red-shirts-30255607.html>

<sup>51</sup> Prachatai English, 'Police condemned for 'unlawful' dismissal of torture allegation by red-shirt bomb suspect', 30 June 2015, <https://prachatai.com/english/node/5233>

<sup>52</sup> Komchaluek, 'National Human Rights Commission of Thailand [NRC] is banned from visiting the Erawan's shrine bombing suspects', 25 March 2015, <http://www.komchadluek.net/news/crime/203605>

<sup>53</sup> UN Communication No. THA 4/2015, 8 June 2015, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18193>

<sup>54</sup> Chiangrai Times, 'Thai Military Court Rejects Erawan Shrine Bombing Suspect's Torture Claims', 23 August 2016, <http://www.chiangraitimes.com/thai-military-court-rejects-erawan-shrine-bombing-suspects-torture-claims.html>; Reuters, 'Chinese Uighur was tortured into

Failure to conduct prompt, effective, independent and impartial investigation into deaths in custody cases where there are credible ill-treatment allegations

44. Thailand has failed to conduct prompt, effective, independent and impartial investigations into cases of deaths in custody where there are credible allegations that the fatalities have been caused by acts of torture and other ill-treatment. Two such cases are the deaths in custody of Pol. Maj. Prakrom Warunprapa and Mr. Suriyan Sucharitpolwong at the military detention facility at Nakhon Chaisri Military Base in Bangkok. In this respect, Adem Karadag too, as noted above, was allegedly tortured while held at Nakhon Chaisri detention facility.
45. On 8 September 2015, the Nakhon Chaisri detention facility was set up by Thailand's Ministry of Justice within the 11<sup>th</sup> Army Circle military base in Bangkok. On 24 November 2015, the ICJ and Human Rights Watch addressed an open letter to the Thai Government expressing deep concern about the detention of non-military persons in Nakhon Chaisri detention facility and urging the Thai Government to "(i)mmediately transfer all non-military persons detained at the Facility to an officially recognized civilian place of detention that complies with international law and standards", and "ensure no further non-military prisoners" would be detained in any military facility.<sup>55</sup>
46. In October 2015, it was reported that Pol. Maj. Prakrom Warunprapa had committed "suicide" in detention.<sup>56</sup> Two days later, the Minister of Justice reportedly informed the press that relevant authorities had conducted an autopsy on his body; that there was no need for further forensic examination; and that the body had been returned to his family for cremation. On 28 October 2015, TLHR and other non-governmental organizations released a public statement calling for, *inter alia*, "(d)etail of the results and process of autopsy of the body of Pol. Maj. Prakrom [to] be disclosed to [the] public and the post mortem inquest warranted as per Section 150 of the Criminal Procedure Code [to] be conducted to uphold the interest of justice, the rule of law and to make it accountable for society in order to quell any climate of fear".<sup>57</sup>
47. On 9 November 2015, Mr. Suriyan Sucharitpolwong was found dead, reportedly as a result of a blood infection, in his cell.<sup>58</sup> It was reported that his body had been returned to his relatives the day before and cremated on 9 November 2015.<sup>59</sup>

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confessing role in Bangkok bomb: lawyer', 15 February 2016., <https://www.reuters.com/article/us-thailand-blast/chinese-uighur-was-tortured-into-confessing-role-in-bangkok-bomb-lawyer-idUSKCN0VO0ID?feedType=RSS&feedName=worldNews>; See also ICJ and Human Rights Watch, 'Thailand: The ICJ and Human Rights Watch express concerns over detentions', 24 November 2015, <http://www.icj.org/thailand-human-rights-watch-and-the-icj-express-concerns-over-detentions/>; ICJ, 'Trial Observation Report: the Case of the Military Prosecutor v. Adem Karadag and Yusuf Mieraili', 23 August 2016.

<sup>55</sup> ICJ and Human Rights Watch, 'Open letter to the Permanent Mission of Thailand to the United Nations in Geneva re: Nakhon Chaisri facility', 24 November 2015, <https://www.icj.org/wp-content/uploads/2015/11/Thailand-Detention-Advocay-OpenLetter-2015-ENG.pdf>

<sup>56</sup> Bangkok Post, 'Key LM suspect found hanged in cell', 24 October 2015, <https://www.bangkokpost.com/learning/advanced/741840/key-lm-suspect-found-hanged-in-cell>

<sup>57</sup> TLHR, 'The opinions of human rights organizations on the criminal proceeding Re: The case of Mr. Suriyan Sucharitpolwong and Pol.Maj.Prakrom Warunprapa', 28 October 2015, <https://tlhr2014.wordpress.com/2015/10/>

<sup>58</sup> The Guardian, 'Thai fortune teller held under royal defamation law found dead', 9 November 2015, <https://www.theguardian.com/world/2015/nov/09/thai-fortune-teller-mor-yong-held-under-royal-defamation-law-found-dead>

<sup>59</sup> Bangkok Post, 'Lese majeste suspect 'Mor Yong' dies in army custody', 11 October 2015, <https://www.bangkokpost.com/print/759328/>

48. In both cases, the deceased's bodies had reportedly been cremated before any investigations in line with international standards could have been conducted.<sup>60</sup>

"Committee managing complaints for torture and enforced disappearance cases"<sup>61</sup>

49. In the absence of domestic legislation criminalizing torture and enforced disappearance, on 23 May 2017, a 'Committee managing complaints for torture and enforced disappearance cases' was established by the Prime Minister, pursuant to Prime Minister's Office Order No. 131/2560 (2017) (hereafter 'Order 131 Committee'). The Order 131 Committee, chaired by the Minister of Justice, Mr. Suwaphan Tanyuvarhana, consists of 15 officials drawn from the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Interior, the Ministry of Health, the Royal Thai Police, the Office of the Attorney-General, the NHRCT, the Internal Security Operations Command (hereafter 'ISOC') and an academic professor.

50. The Order 131 Committee was created purportedly to: screen alleged cases of torture and enforced disappearance; establish policies towards preventing acts of torture and enforced disappearance; investigate and provide remedies in accordance with the Convention and the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED). The Order 131 Committee created three sub-committees to deal with: (i) fact-finding, chaired by the Director-General of the Ministry of Justice's Department of Special Investigation (hereafter 'DSI'); (ii) prevention, chaired by Associate Professor Narong Jaihan, a law lecturer from Thammasat University; and (iii) the provision of remedies, chaired by the Director-General of the Ministry of Justice's Rights and Liberties Protection Department.

51. On 26 June 2017, it was reported that the Order 131 Committee would consider past, pending and new cases of enforced disappearance, including 82 cases of alleged enforced or involuntary disappearance in the country that had already been reported to the Working Group on Enforced or Involuntary Disappearances.<sup>62</sup>

52. While the ICJ and TLHR appreciate the Government's efforts to combat torture and enforced disappearance, how the Order 131 Committee will carry out its functions in practice will have to be assessed at a later date. Further, it is not clear what legal framework – domestic and/or international – will ground the operations of the committee without a law in place to criminalize torture, other ill-treatment and enforced disappearance.<sup>63</sup> The ICJ and TLHR are also concerned that most members of the Order 131 Committee are not independent, as they are not employed by independent civilian bodies, and that the establishment of the committee should not be used to detract from efforts to enact legislation

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<sup>60</sup> See also ICJ and TLHR Joint Submission in view of the preparation of the UN Human Rights Committee of a List of Issues for the examination of the Second Periodic Report of the Kingdom of Thailand under Article 40 of the International Covenant on Civil and Political Rights, 8 April 2016, paras 15 to 16.

<sup>61</sup> This section necessarily covers allegations and investigations of enforced disappearance in Thailand, and must be read in line with the section below on 'Enforced Disappearance'.

<sup>62</sup> Komchadluek, Thailand did not neglect 82 cases on Enforced disappearance, 26 June 2017, <http://www.komchadluek.net/news/regional/284642>

<sup>63</sup> ICJ, Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), TLHR and the Cross Cultural Foundation, Open Letter to the Thai government, 'International Day of the Victims of Enforced Disappearances', 30 August 2017, p3, <https://www.icj.org/wp-content/uploads/2017/08/Thailand-ED-Day-letter-Advocacy-open-letters-2017-ENG.pdf>

criminalizing acts of torture, other ill-treatment and enforced disappearance.<sup>64</sup>

53. In light of the above, the ICJ and TLHR recommend that the following questions be included in the LOIPR for the examination of Thailand:

- ***Please detail whether the State party has conducted independent, effective and impartial investigations into all:  
(i) allegations of torture or other ill-treatment of detainees;  
(ii) allegations of deaths in custody allegedly caused by torture or ill-treatment; and  
(iii) allegations of enforced disappearance.  
Where such investigations have been undertaken, please clarify whether persons found to be responsible for acts of torture or other ill-treatment have been prosecuted, and in cases of convictions, if any, what penalties or punishments were imposed.***
- ***Please explain the legal framework upon which the Order 131 Committee operates to investigate cases raising allegations of torture, other ill-treatment or enforced disappearance. If the Order 131 Committee operates with reference to legal provisions under the Convention and the ICPPED, please state so and clarify how this happens.***
- ***Please clarify how the Order 131 Committee guarantees legal and operational independence in investigating alleged cases of torture, ill-treatment and enforced disappearance.***
- ***Please clarify how the Order 131 Committee operates to protect the rights of victims' families and other individuals who have suffered harm as the direct result of torture, other ill-treatment and enforced disappearance as stipulated under the Convention and ICPPED.***

### **Enforced disappearance**

54. Alleged cases of enforced disappearance in Thailand have not been promptly, effectively, independently and impartially investigated and the Thai Government has yet to ratify the ICPPED, despite signing it in 2012.

55. In its Concluding Observations, the Committee expressed serious concern about "continuing and numerous alleged cases of enforced disappearance", and the "failure to resolve" most of these cases.<sup>65</sup> It urged Thailand to criminalize enforced disappearance in its domestic legislation,<sup>66</sup> conduct prompt, effective and thorough investigations of alleged cases of enforced disappearance,<sup>67</sup> and speed up the process of ratification of the ICPPED.<sup>68</sup>

56. In its Concluding Observations, the HR Committee also recommended that Thailand "clarify the fate or whereabouts of victims" of enforced disappearances, and "provide the truth about the circumstances of those crimes" to family

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<sup>64</sup> Khaosod English, 'New Torture Committee treated with Skepticism, Criticism', 28 June 2017, <http://www.khaosodenglish.com/politics/2017/06/28/new-anti-torture-committee-greeted-skepticism-criticism/>

<sup>65</sup> Committee against Torture, Concluding Observations on the initial report of Thailand, UN Doc. CAT/C/THA/CO/1, 20 June 2014, para 14.

<sup>66</sup> See section above on 'Definition and criminalization of torture, cruel, inhumane and degrading treatment or punishment ('ill-treatment') and enforced disappearance'.

<sup>67</sup> See section above on 'Committee managing complaints for torture and enforced disappearance cases'.

<sup>68</sup> Ibid.

members of victims and ensure that family members are fully apprised of “the progress and results of investigations”.<sup>69</sup>

#### Allegations of Enforced Disappearances in Thailand

57. Between 1980 and 2017, 82 cases of alleged enforced or involuntary disappearance in Thailand were reported to the Working Group on Enforced or Involuntary Disappearances.<sup>70</sup>
58. On 30 June 2011, the Working Group on Enforced or Involuntary Disappearances requested an invitation to visit Thailand. The Thai Government has yet to respond to this request, despite reminders sent on 8 November 2012, 2 September 2013, 28 October 2014, 27 November 2015 and 18 November 2016.<sup>71</sup>
59. In its Concluding Observations, the Committee noted the emblematic cases of alleged enforced disappearance of Mr. Somchai Neelapaijit and Mr. Porlajee “Billy” Rakchongcharoen which highlighted the failure of Thai authorities to conduct prompt, effective and impartial investigations of allegations of enforced disappearance, provide remedies to relatives of missing persons and bring perpetrators to justice.<sup>72</sup> In particular, the Committee recommended that Thai authorities “provide the family of Somchai Neelapaijit with full reparation and take effective measures aimed at the cessation of continuing violations”.<sup>73</sup>

#### *Mr. Somchai Neelapaijit*

60. In March 2004, Mr. Somchai Neelapaijit was reportedly pulled from his car and forced into a vehicle by five men in central Bangkok, after which he disappeared without trace.<sup>74</sup> In April 2004, the Criminal Court in Bangkok issued warrants of arrest for five police officers for allegedly robbing and abducting Mr. Somchai. Following a trial in 2005, only one officer was convicted for a relatively minor charge involving coercion, before that sole conviction was overturned on appeal in March 2011.<sup>75</sup> In December 2015, the Supreme Court of Thailand confirmed the acquittal of all five officers.<sup>76</sup>
61. In late 2016, after an investigation that had lasted 11 years and three months, the DSI closed its investigation of the case on the basis that no culprits had been found.<sup>77</sup>

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<sup>69</sup> Human Rights Committee, ‘Concluding Observations on the second periodic report of Thailand’, UN Doc. CCPR/C/THA/CO/2, 25 April 2017, para 22(b).

<sup>70</sup> Human Rights Council, ‘Report of the Working Group on Enforced or Involuntary Disappearances’, 31 July 2017, A/HRC/36/39, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/36/39](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/39)

<sup>71</sup> Ibid.

<sup>72</sup> Committee against Torture, Concluding Observations on the initial report of Thailand, UN Doc. CAT/C/THA/CO/1, 20 June 2014, paras 14(b), 14(c).

<sup>73</sup> Committee against Torture, Concluding Observations on the initial report of Thailand, UN Doc. CAT/C/THA/CO/1, 20 June 2014, para 18.

<sup>74</sup> For background and detailed analysis of the case, see ICJ, ‘Ten Years Without Truth: Somchai Neelapaijit and Enforced Disappearances in Thailand’, March 2014, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>

<sup>75</sup> ICJ, ‘Ten Years Without Truth:

Somchai Neelapaijit and Enforced Disappearances in Thailand’, March 2014, <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/Ten-Years-Without-Truth-Somchai-Neelapaijit-and-Enforced-Disappearances-in-Thailand-report-2014.pdf>, pp 6, 7; See also Human Rights Watch, ‘Thailand: 12 Years Bring No Answers’, 10 March 2016, <https://www.hrw.org/news/2016/03/10/thailand-12-years-bring-no-answers>

<sup>76</sup> Prachatai English, ‘Supreme Court rules no one guilty for Somchai’s enforced disappearance’, 29 December 2015, <https://prachatai.com/english/node/5735>

<sup>77</sup> Prachatai English, ‘Case closed on disappeared human rights lawyer’, 13 October 2016, <https://prachatai.com/english/node/6648>

*Mr. Porlajee "Billy" Rakchongcharoen*

62. In April 2014, Mr. Porlajee "Billy" Rakchongcharoen, an ethnic minority Karen human rights defender, was last seen in the custody of Kaeng Krachan National Park officials. At that time, Billy had been working with Karen villagers and activists on legal proceedings regarding the alleged burning of homes and other property of villagers in the National Park in 2010 and 2011. Park officials stated that they had detained Billy for "illegal possession of wild honey", and that they had released him later the same day.<sup>78</sup>
63. In April 2014, Billy's wife, Ms. Phinnapha Phrueksaphan, filed a *habeas corpus* petition at the Petchaburi Provincial Court seeking an inquiry into the lawfulness of Billy's detention. In July 2014, the Court of First Instance ruled that there was insufficient evidence to establish that Billy was still in detention at the time of his apparent disappearance. Appeals lodged by the family to higher courts were not successful in revealing more information about Billy's whereabouts.<sup>79</sup>
64. In August 2015, Ms. Phinnapha requested the DSI to open a special investigation into Billy's case.<sup>80</sup> In January 2017, the DSI stated that it would not open such an investigation<sup>81</sup> for three reasons, namely, that the investigation efforts had not resulted in conclusive results; Ms. Phinnapha was not legally married to Billy, and thus had no standing to petition the DSI; and the DSI's investigation could only proceed if Billy's body was found.<sup>82</sup>

*Recent developments regarding the abovementioned cases*

65. At the UN Human Rights Committee's review of Thailand's compliance with the ICCPR in March 2017, Thailand's delegation confirmed that in Mr. Somchai's case "(t)he investigation had been closed in September 2016, but could be reopened if a perpetrator was subsequently identified."<sup>83</sup> Thailand's delegation thereafter stated that, "the Ministry of Justice was considering submitting the cases of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen to a special committee within the Department of Special Investigation for follow-up."<sup>84</sup> On 26 June 2017, it was reported that both cases would be looked into by the newly set up Order 131 Committee.<sup>85</sup>
66. On 30 August 2017, the ICJ, TLHR and other human rights organizations addressed an open letter ('30 August open letter') to the Thai Government calling on the Government to, *inter alia*,

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<sup>78</sup> ICJ, 'Thailand: "Disappearance" of Billy demands special investigation', 17 July 2014, <https://www.icj.org/thailand-disappearance-of-billy-demands-special-investigation/>; See also ICJ and TLHR Joint Submission to the Human Rights Committee in advance of the examination of the Kingdom of Thailand's Second Periodic Report under Article 40 of the International Covenant on Civil and Political Rights, 6 February 2017, para 38.

<sup>79</sup> ICJ, 'Thailand: "Disappearance" of Billy demands special investigation', 17 July 2014, <https://www.icj.org/thailand-disappearance-of-billy-demands-special-investigation/>

<sup>80</sup> ICJ and JPF, 'Thailand: launch special investigation into enforced disappearance of "Billy"', 6 August 2015, <https://www.icj.org/thailand-launch-special-investigation-into-enforced-disappearance-of-billy/>

<sup>81</sup> Prachatai English, 'DSI refuses to accept case of disappeared Karen activist', 31 January 2017, <http://prachatai.org/english/node/6886>

<sup>82</sup> Bangkok Post, 'NHRC pursues fight for 'Billy' with DSI', 10 February 2017, <http://m.bangkokpost.com/news/crime/1195813/nhrc-pursues-fight-for-billy-with-dsi>

<sup>83</sup> UN Human Rights Committee, 119<sup>th</sup> Session, Consideration of reports submitted by States parties under article 40 of the Covenant - Second periodic report of Thailand (continued), CCPR/C/SR.3349, 22 March 2017, para 65.

<sup>84</sup> Ibid, para 4.

<sup>85</sup> Komchadluek, Thailand did not neglect 82 cases on Enforced disappearance, 26 June 2017, <http://www.komchadluek.net/news/regional/284642>



*"Ensure that the DSI effectively implements its obligation to independently, impartially and effectively investigate all reported cases of enforced disappearance, including the alleged enforced disappearance of Somchai Neelapaijit until such time as his fate or whereabouts is established; any individual who has knowledge of the fate or whereabouts of Somchai Neelapaijit or any other alleged victim of enforced disappearance must divulge it immediately;*

*Ensure that the DSI investigates the case of the apparent enforced disappearance of Porlajee "Billy" Rakchongcharoen independently, impartially and effectively until such time as his fate or whereabouts is established;*

*Provide the family victims [i.e., families of the victims] in both cases with access to effective remedies and reparations, including regular updates on the status of the investigations;*

*Ensure, in the cases of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen, that if investigations result in sufficient admissible evidence, those who are reasonably suspected of responsibility are prosecuted in fair proceedings without resort to the death penalty.<sup>86</sup>*

67. At the time of writing, a member of Mr. Somchai's family informed the ICJ that, to date, apart from receiving a letter requesting the family to submit new evidence to the DSI, the authorities have neither contacted nor informed the family about any progress in the case.
68. On 30 March 2017, Billy's mother was invited by the DSI for further questioning on the case on the basis that she had appropriate standing to correspond with the DSI on the matter.<sup>87</sup> At the time of writing, the ICJ was informed by Ms. Phinnapha that, from 30 March 2017 to date, neither she nor Billy's mother had been contacted or informed by the authorities about any progress in the case.

#### Thailand's ratification of the ICPPED

69. On 10 March 2017, the NLA voted in favor of ratifying the ICPPED.<sup>88</sup> The NLA however did not clearly indicate the time frame for action to be taken to deposit the instrument of ratification.
70. The NLA's decision to ratify the ICPPED was made in March 2017 two days before Thailand was scheduled to appear before the UN Human Rights Committee in connection with its review of the country's implementation of its obligations under the ICCPR. At the UN Human Rights Committee's review of Thailand's compliance, the Thai Government delegation confirmed that the NLA had recommended ratification of the ICPPED.<sup>89</sup> With respect to a question asked about the timeline within which Thailand planned to ratify the ICPPED<sup>90</sup>, no

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<sup>86</sup> ICJ, Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), TLHR and the Cross Cultural Foundation, Open Letter to the Thai government, 'International Day of the Victims of Enforced Disappearances', 30 August 2017, pp 7 to 8, <https://www.icj.org/wp-content/uploads/2017/08/Thailand-ED-Day-letter-Advocacy-open-letters-2017-ENG.pdf>

<sup>87</sup> Isranews, 'Billy's wife reveals that DSI conducted further investigation on Billy's case', 2 April 2017, <https://www.isranews.org/isranews-news/55159-billy.html>

<sup>88</sup> Bangkok Post, 'NLA ratifies disappearance pact', 11 March 2017, <http://www.bangkokpost.com/news/general/1212465/nla-ratifies-disappearance-pact>

<sup>89</sup> Summary record of the 3350th meeting, Human Rights Committee: 119th session, CCPR/C/SR.3350, 22 March 2017, para 5.

<sup>90</sup> Summary record of the 3349th meeting, Human Rights Committee: 119th session, CCPR/C/SR.3349, 22 March 2017, para 28.

answer was offered during the session or in Thailand's Additional Written Response.<sup>91</sup>

71. On 6 September 2017, the ICJ was informed by Thailand's Ministry of Foreign Affairs that a decision had been taken to delay the ratification of the ICPPED until legislation had been enacted to give domestic effect to the treaty.
72. In light of the above, the ICJ and TLHR recommend that the following questions be included in the LOIPR for the examination of Thailand:
  - ***Please indicate the time frame for action to be taken by the State party to ratify the ICPPED.***
  - ***Please indicate if the State party has responded to the request by the Working Group on Enforced or Involuntary Disappearances to visit Thailand. If not, please explain the reasons for the State party's delay in providing its response.***
  - ***Please clarify if the Order 131 Committee has taken any measures to follow up on cases of alleged enforced disappearance, including in particular the cases of Mr. Somchai Neelapaijit and Mr. Porlajee "Billy" Rakchongcharoen. If so, please detail what measures the Order 131 Committee will be taking towards ensuring independent, effective and impartial investigations into these cases.***
  - ***Please clarify whether the Order 131 Committee has taken any measures to guarantee proper access to information about the investigations to the families of victims of alleged enforced disappearance, including, in particular, family members of Mr. Somchai Neelapaijit and Mr. Porlajee "Billy" Rakchongcharoen.***

### **Threats and reprisals against persons working to bring to light cases of alleged torture, other ill-treatment and enforced disappearance**

73. Human rights defenders, victims and their families, as well as lawyers have been subjected to judicial harassment, reprisals and threats for working to bring to light cases of alleged torture, other ill-treatment and enforced disappearance.
74. In its Concluding Observations, the Committee expressed concern about "serious acts of reprisals and threats against human rights defenders, journalists, community leaders and their relatives", and urged Thailand to take all relevant measures to stop such "intimidation, harassment and attacks", and to provide "effective remedies to victims and their families."<sup>92</sup>
75. On 20 May 2014, the Royal Thai Army filed a criminal complaint against human rights defender, Ms. Pornpen Khongkachonkiet, and her organization, Cross Cultural Foundation (CrCF), for "damaging the reputation" of the Paramilitary Unit in the southern border provinces of Thailand after she wrote an open letter to the Thai Government requesting an investigation into allegations that military personnel had beaten a man during arrest.<sup>93</sup> In August 2015, Ms. Pornpen was

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<sup>91</sup> Additional written response to the Human Rights Committee, Thailand, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fAIS%2fTHA%2f27271&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fAIS%2fTHA%2f27271&Lang=en)

<sup>92</sup> Committee against Torture, Concluding Observations on the initial report of Thailand, UN Doc. CAT/C/THA/CO/1, 20 June 2014, para 18.

<sup>93</sup> ICJ, 'Thailand: immediately withdraw criminal defamation complaint against human rights defender', 28 August 2014, <http://www.icj.org/thailand-immediately-withdraw-criminal-defamation-complaint-against-human-rights-defender/>

informed by the police that the prosecutor had decided not to prosecute her.

76. On 19 March 2015, it was reported that Col. Winthai Suwaree, spokesperson for the NCPO, responded to a statement released by TLHR on 17 March 2015,<sup>94</sup> which alleged that Mr. Sansern and three other men<sup>95</sup> had been tortured in military detention.<sup>96</sup> In his response, Col. Winthai denied that the military had tortured the men and threatened to retaliate with legal action against “those who spread the allegation”, in a veiled threat against TLHR.<sup>97</sup>
77. On 19 February 2016, the Royal Thai Police’s Deputy Commissioner, General Sriwara Rangsipramanakul, reportedly threatened to charge Mr. Chuchart Kanpai, Adem Karadag’s lawyer, for allegedly revealing false information, namely, that his client had been tortured into confessing that he had been involved in the bomb attack at Erawan Shrine in August 2015.<sup>98</sup> General Sriwara stated that he had signed a letter granting permission to prosecute Mr. Chuchart on charges of defamation and “insult” which would be sent to the Commissioner-General for further consideration. General Sriwara reportedly also threatened Mr. Chuchart that if he were to speak in a manner that would affect “Thailand’s image” or “national security” in the future, he would press additional charges against Mr. him.<sup>99</sup>
78. On 26 July 2016, following a complaint by the ISOC Region 4 Forward Command, three human rights defenders, Ms. Pornpen Khongkachonkiet, Mr. Somchai Homlaor and Ms. Anchana Heemina, were charged with criminal defamation and violation of the Computer Crimes Act for publishing a report that documented 54 alleged cases of torture and ill-treatment by Thai authorities in the southern border provinces since 2004.<sup>100</sup> The report was rejected by the ISOC Region 4 Forward Command, which stated that the allegations were not well-founded, and that only 18 out of 54 alleged torture victims could be identified.<sup>101</sup>
79. On 7 March 2017, the ISOC Region 4 Forward Command announced its intention to drop its complaint against the three human rights defenders at a press conference in Bangkok, citing the need for authorities and non-governmental organizations to work in collaboration to address alleged human rights violations. On 24 October 2017, the Region 9 Senior Expert Public Prosecutor, on behalf of the Provincial Prosecutor in Pattani province, informed the Superintendent of the Muang District Police Station in Pattani province that the office had decided not to prosecute the three individuals mentioned above in connection with criminal defamation and violation of the Computer Crimes Act.<sup>102</sup>

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<sup>94</sup> TLHR, ‘Press Statement The alleged torture of Criminal Court bomb suspects’, 21 March 2015, <http://www.tlhr2014.com/th/?p=504>

<sup>95</sup> Charnvit Jariyanukul, Norapat Luepol, and Wichai Yoosuk.

<sup>96</sup> Khaosod English, ‘Torture Allegation Is A ‘Distortion Of Facts,’ Thai Junta Says’, 19 March 2015, <http://www.khaosodenglish.com/politics/2015/03/19/1426765460/>

<sup>97</sup> Ibid.

<sup>98</sup> Human Rights Watch, ‘Thailand: Rights Lawyers Harassed, Charged’, 4 March 2016, <https://www.hrw.org/news/2016/03/04/thailand-rights-lawyers-harassed-charged>

<sup>99</sup> Thai Rath, ‘Sriwara agreed that the Thai lawyer representing ‘Adem’ the Erawan Shrine bomb suspect should be file on 2 charges’, 19 February 2016, <https://www.thairath.co.th/content/579698>

<sup>100</sup> ICJ, ‘Thailand: stop use of defamation charges against human rights defenders seeking accountability for torture’, 27 July 2016, <https://www.icj.org/thailand-stop-use-of-defamation-charges-against-human-rights-defenders-seeking-accountability-for-torture/>

<sup>101</sup> Isranews, ‘Military rejected Torture Report, said only 18 can be identified’, 12 June 2016, [https://www.isranews.org/content-page/67-south-slide/47629-eight\\_47629.html](https://www.isranews.org/content-page/67-south-slide/47629-eight_47629.html)

<sup>102</sup> ICJ, ‘Thailand: ICJ welcomes decision to end proceedings against human rights defenders who raised allegations of torture’, 1 November 2017, <https://www.icj.org/thailand-icj-welcomes-decision-to-end-proceedings-against-human-rights-defenders-who-raised-allegations-of-torture/>

80. Along with dropping its complaint, the ISOC Region 4 Forward Command proposed the following three conditions,<sup>103</sup> namely, (i) to establish a "joint fact-finding committee" to look into allegations of human rights violations in the southern border provinces, which would comprise military officers and non-governmental organizations; (ii) to seek mechanisms to prevent and provide remedies for human rights violations; and (iii) in publishing a report of alleged human rights violations, the report must be first reviewed by the "joint fact-finding committee" to ensure accuracy of information and to ensure that no person is adversely affected.<sup>104</sup>
81. The ICJ and TLHR are concerned that the operation of such a "joint fact-finding committee" may lack independence, as military officers will be involved in the investigation of human rights violations in the southern border provinces.
82. On 5 October 2016, Ms. Narissarawan Kaewnopparat, a niece of an army conscript, Mr. Wichian Phuaksom, who was allegedly tortured to death during military training in 2011, was indicted under the Computer Crimes Act after revealing the circumstances of her uncle's death. Her case is now pending a formal indictment by the prosecutor.<sup>105</sup>
83. On 22 November 2017, Mr. Anuphong Phanthachayangkun, a former Sub-district Head from Su-ngai Padi District in Narathiwat province, was sentenced to one year in prison after the Supreme Court upheld the verdict of the lower courts. Mr. Anuphong had been accused of making a false complaint against an investigation team led by Pol. Gen. Kowit Wattana, claiming that he had been tortured into confessing that he was involved in a 2004 armed robbery case at Naradhiwas Rajanagarindra Army Base, and in the murder of a police officer with three other individuals. Mr. Anuphong filed his complaint against 20 police officers in the investigation team after his acquittal of these charges by the Court of First Instance and the Appeal Court.<sup>106</sup>
84. On 28 September 2016, Amnesty International cancelled the public launch of its report on 'state-sponsored torture' in Thailand, which documented 74 cases of torture and other ill-treatment allegedly perpetrated by military and police officers, after Thai police warned the organization that its international representatives could be arrested and prosecuted for visa violations if the event went ahead.<sup>107</sup>
85. While the authorities have dropped some cases, the ICJ and TLHR remain concerned about the chilling effect that acts of reprisals and threats have had on

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<sup>103</sup> Benar News, 'ISOC Region 4 dropping of complaints on defamation and Computer Crime Act against 3 human rights defenders regarding the reporting on torture', 7 March 2017, <http://www.benarnews.org/thai/news/TH-activists-rights-03072017162349.html>; See also ICJ, 'Thailand: ICJ welcomes dropping of complaints against human rights defenders but calls for investigation into torture', 7 March 2017, <https://www.icj.org/thailand-icj-welcomes-dropping-of-charges-against-human-rights-defenders-but-calls-for-investigation-into-torture/>

<sup>104</sup> On 9 March 2017, the three human rights defenders issued a statement regarding the conditions, saying that "details on how this collaboration shall be pursued will be further discussed in the nearest future" and the final condition that human rights violations need to be reported "shall be discussed and examined by relevant sectors". See Cross-Cultural Foundation, 'CrCF: The Internal Security Operations Command (ISOC) withdrew criminal defamation complaint against the three human rights defenders', 9 March 2017, <https://voicefromthais.wordpress.com/2017/03/09/crcf-the-internal-security-operations-command-isoc-withdrew-criminal-defamation-complaint-against-the-three-human-rights-defenders/>

<sup>105</sup> TLHR, 'Human rights defenders under Thailand's military regime', 10 October 2016, <http://www.tlhr2014.com/th/?p=2368>

<sup>106</sup> Prachatai, 'Ex-kamnan from Deep South jailed for accusing police of torture', 24 November 2017, <https://prachatai.com/english/node/7485>

<sup>107</sup> Prachatai, 'Thai authorities prevent press briefing on state-sponsored torture', 28 September 2016, <http://www.prachatai.com/english/node/6599>

the work of persons seeking to bring to light cases of alleged torture, other ill-treatment and enforced disappearance.

86. In light of the above, the ICJ and TLHR recommend that the following questions be included in the LOIPR for the examination of Thailand:

- ***Please state which measures, if any, have been taken to ensure that human rights defenders can work in a safe and secure environment where there is no fear of reprisals or threats against them. If measures implemented by the State party to guarantee the safety and security of human rights defenders have not resulted in their safety and security, as the abovementioned cases illustrate, please detail what efforts, if any, have been made to address the ongoing shortcomings.***
- ***Please clarify if there are any measures in place to ensure that victims of verbal and physical reprisal attacks and threats, as well as victims of even more serious reprisal acts, such as enforced disappearances and extra-judicial killings (and their families, whenever relevant) are able to report their complaints to the authorities without fear of being subject to further reprisal.***
- ***Please clarify what legal mechanisms exist to guarantee the safety and security of human rights defenders in Thailand.***