



SUPPLEMENTARY SUBMISSION BY THE INTERNATIONAL COMMISSION OF JURISTS, THAI LAWYERS FOR HUMAN RIGHTS AND CROSS-CULTURAL FOUNDATION ON THAILAND'S IMPLEMENTATION OF THE HUMAN RIGHTS COMMITTEE'S PRIORITIZED RECOMMENDATIONS FOLLOWING ITS REVIEW OF THAILAND'S SECOND PERIODIC REPORT AT ITS 119TH SESSION

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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.

The Cross Cultural Foundation (CrCF) is based in Bangkok and provides legal assistance and advocacy to victims of violence nationwide, and has been working in the Southern Border Provinces since 2009. CrCF adheres to a philosophy that puts it at the forefront of promotion of human rights whilst advocating for the reform of the justice process. CrCF places emphasis on helping marginalized groups including indigenous peoples, ethnic groups, stateless persons, migrant workers, human rights defenders, and victims of human rights violation and conflicts in Thailand.

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Supplementary submission by the International Commission of Jurists, Thai Lawyers for Human Rights and Cross-Cultural Foundation on Thailand's Implementation of the Human Rights Committee's Prioritized Recommendations Following its Review of Thailand's Second Periodic Report at its 119th Session

Introduction

1. Since the joint follow-up submission by the International Commission of Jurists ('ICJ'), Thai Lawyers for Human Rights ('TLHR') and Cross-Cultural Foundation ('CrCF') to the Committee regarding Thailand's implementation of the Committee's prioritized recommendations in paragraphs 8 (constitution and legal framework) and 22 (extrajudicial killings, enforced disappearances and torture) of the Concluding Observations on 27 March 2018 ('Joint ICJ, TLHR, CrCF Follow-up Submission'),¹ there have been several developments that the three organizations wish to bring to the attention of the Committee. These updates are set out in greater detail below.

Constitution and legal framework

2. Between the *coup d'état* of May 2014 and the dissolution of the National Council for Peace and Order ('NCPO') in July 2019, the Head of the NCPO issued at least 212 Head of the NCPO orders ('HNCPO Order') under Article 44 of the interim Constitution of 2014, and the NCPO issued at least 214 general orders and 132 announcements during the same period.² In addition, at least eight HNCPO orders were issued after the general election in March 2019.
3. Pursuant to Article 265 of the 2017 Constitution of the Kingdom of Thailand ('2017 Constitution'), the Head of the NCPO and the NCPO retained the power to issue orders and announcements until the new Cabinet officially took up their positions on 16 July 2019.³ According to Article 279 of the 2017 Constitution, all NCPO orders, announcements and acts must be considered constitutional and lawful and shall continue to be in force, unless they are repealed or amended by the passage of an Act.
4. Before the NCPO was dissolved and the new Cabinet took up their positions, the Thai Government and the Council of the State conducted a review of the existing

¹ Joint Follow-up submission by ICJ, TLHR and CrCF on Thailand's Implementation of the Human Rights Committee's Prioritized Recommendations Following its Review of the Country's Second Periodic Report at its 119th Session ('Joint ICJ, TLHR, CrCF Follow-up Submission'), 27 March 2018. Available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGS%2fTHA%2f30782&Lang=en; in addition, jointly with TLHR, the ICJ made a submission to the Committee in advance of the Committee's examination of Thailand's second periodic report under Article 40 of the Covenant. That submission is available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_CSS_THA_26602_E.pdf.

² List of HNCPO and NCPO orders and announcements: <http://library2.parliament.go.th/giventake/ncpo.html> (in Thai).

³ We further note that Article 279 of the 2017 Constitution holds that NCPO orders and announcements may only be repealed or amended by the passage of an Act. However, according to Section 136-137 of the 2017 Constitution, even after an elected government assumes its duties, a draft Act shall be approved by not only the House of Representatives, but also the Senate, whose members were selected by the NCPO.

HNCPO and NCPO orders and announcements.⁴ Following this review, HNCPO Order Nos. 22/2561 and 9/2562 were issued to repeal, in whole and/or in part, 87 HNCPO orders, NCPO orders and NCPO announcements. However, several orders and announcements that are clearly inconsistent with Thailand's obligations under the International Covenant on Civil and Political Rights ('ICCPR') remain in force.

5. Unfortunately, the above-noted reviewing process of the remaining HNCPO and NCPO orders and announcements was carried out without public participation, openness or transparency. As a result, members of civil society organizations and the public could not meaningfully participate in the process.

HNCPO Order No. 22/2561⁵

6. On 11 December 2018, the Head of the NCPO invoked Article 265 of the 2017 Constitution and Article 44 of the 2014 interim Constitution to issue HNCPO Order No. 22/2561, which repealed, in whole and/or in part, nine HNCPO orders, NCPO orders and NCPO announcements in view of the holding of a general election on 24 March 2019.⁶ In particular, HNCPO Order No. 22/2561 repealed Article 12 of HNCPO Order No. 3/2558, which had prohibited the gathering of five or more persons for "political purposes".
7. Notwithstanding the adoption of HNCPO Order No. 22/2561, those individuals affected by its enforcement are still unable to seek a remedy or, in a few cases described below, appeal against their sentence or otherwise seek to have it annulled as Article 2 of HNCPO Order No. 22/2561 states that "prosecutions, actions or operations" already in effect by virtue of those orders will not be affected by the coming into force of HNCPO Order No. 22/2561.
8. In the aftermath of this repeal, Thai courts have dismissed at least nine cases⁷ pending before them concerning alleged "violations" of Article 12 of HNCPO Order No. 3/2558 on the basis that the offence no longer exists in law, following the adoption of HNCPO Order No. 22/2561.⁸ However, in one case, on 8 November 2019, the Supreme Court upheld the lower courts' judgments to punish a human rights activist who was convicted for violating the ban on political gatherings under

⁴ ICJ, 'Thailand: end prosecution of civilians in military courts', 22 April 2019, available at: <https://www.icj.org/thailand-end-prosecution-of-civilians-in-military-courts-and-repeal-or-amend-head-of-the-ncpo-and-ncpo-orders-and-announcements-in-line-with-international-human-rights-law/>.

⁵ Available at: https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order22-2561.pdf.

⁶ ICJ & TLHR, 'Thailand: lifting of the ban on political activities is welcome but more is needed', 13 December 2018, available at: <https://www.icj.org/thailand-lifting-of-the-ban-on-political-activities-is-welcome-but-more-is-needed/>; see also: TLHR's analysis of all repealed orders at: TLHR, 'Legal Observations on Head of the NCPO Order No. 22/2561', 13 December 2018, available at: <https://www.tlhr2014.com/?p=10076>.

⁷ i.e. Black Case No. 6792/2561, Black Case No. 272/2561, Black Case No. 61/2559, Black Case No. 102/2560, Black Case No. 83/2560, Black Case No. Aor. 97/2559, Black Case No. 808/2561, Red Case No. 45/2562, and see: iLaw, 'Case Database: Corruption Center at Imperial Lad Prao', available at: https://freedom.ilaw.or.th/th/case/735?fbclid=IwAR24BunmNxyBqVj1y6QoLVjFcAwRO4LFXkOM8WWwCBJwiYqp8pc73zu_3Ik

⁸ Notably, before the adoption of HNCPO Order No. 22/2561, in case of Thanet Anantawong, who allegedly violated Article 12 of HNCPO Order No. 3/2558 during a train trip to Rajabhakti Park in December 2015 as part of a call for an investigation into alleged irregularities in the park's construction, Bangkok Military Court sentenced him to four months' imprisonment after he pleaded guilty. Thanet already served his prison term for this case but is still in prison awaiting trial for another case related to his online posting of a corruption diagram depicting the Rajabhakti Park scandal (sedition-like offence under Article 116 of the Criminal Code and violation of the 2007 Computer Crime Act).

the NCPO Announcement No.7/2557, which was later replaced by HNCPO Order No. 3/2558, for his protest against the NCPO in 2014. The Court rejected the defendant's arguments that Article 12 of HNCPO Order No. 3/2558 no longer existed in law⁹ and, citing its Article 2, ruled that prosecutions in this case would not be affected by the coming into force of HNCPO Order No. 22/2561.¹⁰

9. In addition, cases occurred before 11 December 2018,¹¹ which were subject to HNCPO Order No. 3/2558, may legally continue to be prosecuted in the courts. For example, on 27 January 2020, a public prosecutor decided to prosecute 38 activists calling themselves "People Who Want Elections" for allegedly violating HNCPO Order No. 3/2558, Public Assembly Act B.E. 2558 (2015), Criminal Code and Traffic Act B.E. 2522 (1979), as a result of their participation in the assembly at Thammasat University and in front of UN ESCAP building in Bangkok on 21-22 May 2018. The case is currently pending before Dusit District Court.¹² In another case, other 12 individuals are being prosecuted for violating HNCPO Order No. 3/2558, and the Act on the Referendum for the Draft Constitution B.E. 2559 (2016) for distributing leaflets on the draft Constitution referendum at Bang Sao Thong district, Samut Prakan province, in June 2016. The case is currently pending before Samut Prakan Provincial Court.¹³
10. ICJ, TLHR and CrCF are also concerned that, despite the repeal of certain orders and announcements, in particular Article 12 of HNCPO Order No. 3/2558, the rights to freedom of expression, association and assembly have continued to be restricted in the period leading up to and in the aftermath of the March 2019 general election.
11. In the run up to the general election, there were reports that organizers and participants of several political gatherings were called to speak or meet with military officers. There were also reports that several politicians and political activists were followed and/or visited by military officers.¹⁴ Several public gatherings and protests were also prevented from taking place for alleged violation of the Public Assembly Act,¹⁵ in particular by the use of notification systems where a failure to notify the

⁹ The defendants had asked the Court to make its decision based on Article 2 paragraph 2 of the Criminal Code, which provides that "If, according to the law as provided afterwards, such act is no more an offence, the person doing such act shall no longer be considered an offender; and, if there is a final judgment inflicting the punishment, such person shall be deemed as not having ever been convicted by the judgment for committing such offence" (unofficial translation).

¹⁰ Prachatai, 'Supreme Court fined THB 6000 from Apichart for Protesting Against the NCPO' (in Thai), 8 November 2019, available at: <https://prachatai.com/journal/2019/11/85066>.

¹¹ The date that HNCPO Order No. 22/2561 entered into force.

¹² TLHR, 'Progress about UN62 Case: Public Prosecutor of Dusit District Region Decided to Prosecute Offence Under HNCPO Order 3/2558, Even when the Law was Repealed' (in Thai), 27 January 2020, available at: <https://www.tlhr2014.com/?p=15693>.

¹³ TLHR, 'Almost 4 Years After Distributing Leaflets on the Draft Charter Referendum at Bang Sao Thong, Seven Witness Hearings Will be Convened in July to September 2020' (in Thai), 2 March 2020, available at: <https://www.tlhr2014.com/?p=16306>.

¹⁴ For more information: TLHR, 'Can it be free and fair as expected?', 5 March 2019, available at: <https://www.tlhr2014.com/?p=11218&lang=en>; TLHR, 'Election under the shadow of NCPO: Updates on harassment against politicians', 22 March 2019, available at: <https://www.tlhr2014.com/?p=11459&lang=en>; and TLHR, 'Ordinary people are still treated as a "target" despite the forthcoming election', 22 March 2019, available at: <https://www.tlhr2014.com/?p=11481&lang=en>.

¹⁵ For more information about concerns related to Public Assembly Act, see: Thai Civil Society Organizations (with support of CCPR Centre), 'Situation of the Freedom of Peaceful Assembly in Thailand', 2020, available at: https://www.ohchr.org/Documents/HRBodies/CCPR/GCArticle21/NGO_Thai_Civil_Society_Orgs_.docx; see also, ICJ, 'Thailand: ICJ co-hosts round-table on right to peaceful assembly', 27 November 2019, available at: <https://www.icj.org/thailand-icj-co-hosts-round-table-on-right-to-peaceful-assembly/>.

authorities of an assembly was used as basis to render participation in the assembly unlawful and for dispersing the assembly.¹⁶

12. In the aftermath of the March 2019 general election, the exercise of freedom of expression and assembly has similarly been restricted. In April 2019, local authorities, police and military officials reportedly blocked the campaign launched by university students, demanding the impeachment of the Election Commission of Thailand, by visiting the organizers at their residences, questioning and asking them not to organize the campaigns.¹⁷ In January 2020, anti-government events demanding the Prime Minister's resignation were planned under the banner of the "Run Against Dictatorship" in at least 39 provinces throughout Thailand; however, at least four such events were forced to cancel; another 14 had to relocate;¹⁸ and at least 18 organizers of these events¹⁹ in 13 provinces faced/are facing charges for failing to notify the authorities of an assembly under the Public Assembly Act.²⁰

HNCPO Order No. 9/2562²¹

13. On 9 July 2019, the Head of the NCPO issued HNCPO Order No. 9/2562 – which repealed, in whole and/or in part, 32 NCPO Announcements, 29 NCPO Orders and 17 HNCPO Orders, which "have already achieved their goals" and should be repealed in order to "bring them inline and make them appropriate with the changing circumstances and to strengthen the unification of the whole legal system to facilitate the assessment and implementation of the laws".²² The orders that were repealed include NCPO Announcement Nos. 37/2557, 38/2557 and 50/2557 and HNCPO Order No. 55/2559, which allow the military courts to prosecute civilians. All cases with civilian defendants pending before the military courts were therefore transferred to civilian courts.²³ In addition, NCPO Announcement Nos. 97/2557 and 103/2557, which restrict media freedom and the right to information, were also repealed with immediate effect.²⁴

14. Section 8 of HNCPO Order No. 9/2562 also provides that "the abolishment of these NCPO Announcements, NCPO Orders and HNCPO Orders shall not affect any undertakings which were carried out in accordance with the Orders or Announcements before they ceased to be in force, and shall be considered constitutional and lawful in accordance with Article 279 of the Constitution".

¹⁶ TLHR, 'Restrictions and Harassments Remain: Public assemblies in January and Before the Elections', 6 April 2019, available at: <https://www.tlhr2014.com/?p=10794&lang=en>.

¹⁷ TLHR, 'Road for the Impeachment of the EC With Obstacles: Activities Were Shut Down or Interfered in 18 Regions' (in Thai), 11 April 2019, available at: <https://www.tlhr2014.com/?p=11820>.

¹⁸ TLHR, 'Hurdles on the Track: An Overview of the Restrictions of Rights and Freedoms During #Runagainstdictatorship Throughout Thailand' 24 February 2020, available at: <https://www.tlhr2014.com/?p=16083&lang=en>.

¹⁹ The number as of 28 January 2020.

²⁰ TLHR, 'Progress of Cases Related to the Event 'Run Against Dictatorship' (in Thai), 12 March 2020, available at: <https://www.tlhr2014.com/?p=16184>.

²¹ Available at: http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/174/T_0022.PDF.

²² TLHR, 'Military authorities can still Arbitrarily Detain Civilians: Analysis of the Head of the NCPO Order No. 9/2562 that Repealed Some Announcements/Orders that are No Longer Necessary', 11 July 2019, available at: https://www.tlhr2014.com/?p=12995&fbclid=IwAR3Aaizz-w5-0EWtPyd1FojKQ0bDppesTkun_e3CHG9l8zrLTK5tmByp6ng&lang=en.

²³ HNCPO Order No. 9/2562, available at: https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order9-2562.pdf.

²⁴ See also: ICJ, 'Thailand: End Prosecution of Civilians in Military Courts', 22 April 2019, at 7-14, available at: <https://www.icj.org/thailand-end-prosecution-of-civilians-in-military-courts-and-repeal-or-amend-head-of-the-ncpo-and-ncpo-orders-and-announcements-in-line-with-international-human-rights-law/>.

15. Importantly, other HNCPO and NCPO orders and announcements that are clearly inconsistent with Thailand's obligations under the ICCPR remain in force, including:²⁵
- a. Orders providing the military with superior powers over civil authorities (e.g. HNCPO Order Nos. 3/2558 and 13/2559). The Orders continue to grant military officers broad and unchecked powers to investigate, arrest and detain persons in places not formally recognized as places of detention for up to seven days, with no judicial oversight.²⁶
 - b. Orders that criminalize those who were called to report themselves to the NCPO after the *coup* in 2014,²⁷ but did not comply with such orders (e.g. NCPO Announcement Nos. 25/2557, 29/2557 and 41/2557). Violators can be punished with up to two years' imprisonment or a fine of up to 40,000 baht, or both. They will also be banned from carrying out any financial transactions or any transactions linked to their properties.
 - c. Orders that infringe on the rights to freedom of expression, assembly and association (e.g. NCPO Announcement No. 7/2557 and HNCPO Order Nos. 3/2558 and 22/2561 (Article 2)), particularly the ban on "all political gatherings" that NCPO Announcement No. 7/2557 might retain.²⁸
 - d. Orders that infringe on community and environmental rights (e.g. HNCPO Orders No. 17/2558, 3/2559 and 74/2559) by authorizing the acquisition of land for special economic zones ('SEZs'), while allowing the bypassing of the usual checks and balances on their impact on the environment, health and on the rights of community groups living in affected land areas.
16. Paragraph 4 of Thailand's Response to the Committee addresses the role of the Constitutional Court in reviewing the legality of the HNCPO and NCPO orders and announcements. With respect to this, ICJ, TLHR and CrCF would like to draw the Committee's attention to the fact that, in December 2017, 24 civil society activists filed petitions with the Constitutional Court requesting the Court to annul HNCPO

²⁵ Ibid.

²⁶ See also: ICJ and Human Rights Watch, 'Thailand: The ICJ and Human Rights Watch Express Concerns Over Detentions', 24 November 2015, available at: <https://www.icj.org/thailand-human-rights-watch-and-the-icj-express-concerns-over-detentions/>. Notably, since 30 March 2019, according to the directive of the Ministry of Justice which appeared in the Royal Gazette, the temporary detention facility of the 11th Army Circle military base "for the sake of detaining national security and other related offences detainees" was moved from Thanon Nakhon Chaisri subdistrict to Thung Song Hong subdistrict.

²⁷ NCPO Orders that listed names of individuals who were called to report themselves to the NCPO, e.g. NCPO Order Nos. 1/2557, 2/2557, 3/2557, 5/2557, 6/2557, 12/2557, 13/2557, 14/2557, 23/2557, 25/2557, 29/2557, 15/2557, 16/2557, 18/2557, 19/2557, 23/2557, 25/2557, 29/2557, 30/2557, 31/2557, 34/2557, 35/2557, 36/2557, 42/2557, 43/2557, 44/2557, 46/2557, 48/2557, 49/2557, 50/2557, 52/2557, 53/2557, 57/2557, 58/2557, 61/2557, 63/2557, 65/2557, 68/2557, 82/2557, 86/2557, etc.

²⁸ Notably, there is concern about the lack of clarity on the status of NCPO Order No. 7/2557 - the banning of political gatherings of five or more people, because such Order was not explicitly repealed by the adoption of Article 12 of HNCPO Order No. 3/2558 and HNCPO Order Nos. 22/2561 and 9/2562. In a case documented by TLHR, a person suspected of violating NCPO Order No. 7/2557 did not see his case automatically dismissed, as it would have if his case had been brought as a violation of Article 12 of NCPO Order No. 3/2558. In February 2019, however, the court eventually dismissed this case on the basis that the language of NCPO Order No. 7/2557 is in essence the same as Article 12 of NCPO Order No. 3/2558, and his case should therefore be treated in a similar manner. See, TLHR, '4 years' after, the (beloved) election case, the trial end' (in Thai), 15 February 2019, available at: <https://www.tlhr2014.com/?p=10931>.

Order No. 3/2558 on the grounds that Article 6²⁹ and Article 12 of the Order violated the 2017 Constitution.³⁰ However, on 26 February 2018, the Constitutional Court rejected the petitions holding that there are two avenues to challenge the constitutionality of a legal provision: either to file a petition before a court (under Article 212 of the Constitution) or to file it with the Office of the Ombudsman of Thailand (under Article 231(1) of the Constitution).³¹ In the circumstances, the Constitutional Court, therefore, held that the direct submission of the petition to the Constitutional Court itself was not allowed unless the petitioner had already lodged the complaint with every other instance empowered to hear it, and had failed to obtain a remedy.³² Separately, on 6 March 2018, a group of activists submitted a petition to the Office of the Ombudsman of Thailand, maintaining that Article 12 of the HNCPO Order No. 3/2558 violated the Constitution. On 3 May 2018, the Office of the Ombudsman replied that HNCPO Order No. 3/2558 did not violate the Constitution, and was, in fact, upheld by Articles 279 and 265 of the Constitution. In light of this, the Ombudsman considered that there was no need to refer the case to the Constitutional Court for its consideration.³³

17. In November 2019, a member of the house of representatives proposed to establish a legislative committee to study the effects of all the Orders and Announcements of the NCPO and the exercises of the HNCPO's power under Article 44 of the interim Constitution in an attempt to allow Parliament to determine the necessity of the Orders/Announcements, to reaffirm or abolish the remaining Orders and Announcements, and to provide remedies to those whose rights were violated. The motion, however, was not approved by the House of Representatives. The ICJ, TLHR and CrCF deeply regretted that the government failed to manifest its sincerity to

²⁹ Enabling the detention of persons in places not formally recognized as places of detention for up to seven days.

³⁰ TLHR, 'People take to the Constitutional Court to examine the NCPO orders issued under Article 44 of NCPO interim Charter' (in Thai), 19 December 2017, available at: <https://www.tlhr2014.com/?p=5842>.

³¹ Prachatai, 'Constitutional Court rejects ruling that HNCPO Order 3/2558 was not in compliance with the Constitution' (in Thai), 27 February 2018, available at: <https://prachatai.com/journal/2018/02/75623>."

³² Notably, the judgment was issued five days before the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018) came into force (on 3 March 2018). Under section 46 of the Organic Act, "a person whose right or liberty has been directly infringed and suffered a grievance or loss, or may suffer an unavoidable grievance or loss due to such infringement of right or liberty, shall have the right to submit an application to the Court for a ruling under section 7 (11). A complaint shall first be lodged with the Ombudsman within 90 days of knowledge or presumed knowledge of the infringement of right or liberty. However, if the infringement of right or liberty is continuing, the complaint may be submitted as long as the infringement of right or liberty still exists. The provision of section 48 paragraph one and paragraph two shall apply mutatis mutandis. An application must be submitted to the Court within 90 days of receiving notice of the Ombudsman's opinion, or on the expiration date of the time limit of the Ombudsman's non-submission of an application to the Court pursuant to section 48 paragraph two". Pursuant to section 48 of the Organic Act, "... where a person whose right or liberty protected by the Constitution has been infringed finds that such infringement was a result of a provision of law being contrary to or inconsistent with the Constitution, an application shall be submitted to the Ombudsman, and the Ombudsman shall consider the submission of an application to the Court together with an opinion within sixty days of receiving the application from the applicant. The Ombudsman shall notify the applicant of the outcome of consideration within ten days of the expiration of such period. In the case where the Ombudsman does not submit an application under paragraph one, or does not submit an application within the period under paragraph one, the person whose right has been infringed may submit an application directly to the Court"

³³ Matichon, 'People Who Want Elections Revealed that the Ombudsman Examined their petition and pointed out that HNCPO Order No.3/2558 does not Violate the Constitution – will not Send the Case to the Constitutional Court for Their Ruling' (in Thai), 10 May 2018, available at: https://www.matichon.co.th/politics/news_949831.

provide access to a remedy for human rights violations.³⁴ The Organizations also regretted the fact that, after such proposal was rejected, the government did not take any initiative to bring about reparations for the violation of human rights under the rule of the NCPO.

Extrajudicial killings, enforced disappearances and torture

18. The ICJ, TLHR and CrCF remain concerned that, despite the Committee's recommendations, domestic legislation criminalizing torture, other ill-treatment and enforced disappearance has not been enacted. On 20 December 2018, the National Legislative Assembly ('NLA') approved the Draft Prevention and Suppression of Torture and Enforced Disappearance Act ('Draft Act') at first reading.³⁵ The Draft Act was originally scheduled to be considered by the NLA on 7 March 2019 for a second and third reading, but the Draft Act's consideration was postponed and taken off the schedule at the last minute. After the general election in March 2019, the draft was sent back to the Cabinet for it to be reintroduced before Parliament by the new government. However, the Ministry of Justice withdrew the draft Act from the Cabinet "for further revision", an act which has served to further delayed the passage of essential legislation. The Draft Act was again scheduled for public consultation between 4 and 31 December 2019. After incorporation of comments made in the public hearing, it will be submitted to the Cabinet and the Parliament. Presently, the Draft Act is still with the Ministry of Justice.
19. ICJ, TLHR and CrCF regret that the latest version of the Draft Act, which was made available for public hearing, after several rounds of revisions and consultations, retains the principal shortcomings that the three organizations and other stakeholders and experts made clear would need to be addressed in order to bring it into line with Thailand's international human rights obligations. These shortcomings include: the incomplete definitions of the crimes of torture and enforced disappearance; the absence of provisions concerning cruel, inhuman and degrading treatment or punishment; the absence of provisions concerning the continuous nature of the crime of enforced disappearance; and statute of limitations for the crimes of torture and enforced disappearance.³⁶
20. Thailand's failure to date to enact domestic legislation criminalizing torture, other ill-treatment and enforced disappearance is of particular concern. Without such a law in place, the only mechanism open to family members of victims of enforced disappearances to report the disappearance of their loved ones remains the National Committee for Managing Cases Relating to Torture and Enforced Disappearance.³⁷
21. With respect to this, as of the date of the submission, however, there has been no public report on the progress of investigations of cases falling under the remit of the said Committee.³⁸ Public reporting on its work is crucial to ensure family members and relatives of disappeared persons, and the public, be fully informed about progress in such investigations. Nevertheless, some statistical updates were reported to the Cabinet on 19 November 2019. According to such report, the

³⁴ See the Parliament's press release, available (in Thai) at: https://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/ewt_news.php?nid=62111&filename=The_House_of_Representatives.

³⁵ The NLA required three readings of a bill before its passage into law.

³⁶ For full analysis, See: ICJ, 'Thailand: continuing delay in the enactment of the draft law on torture and enforced disappearance undermines access to justice and accountability', 20 December 2019, available at: <https://www.icj.org/thailand-continuing-delay-in-the-enactment-of-the-draft-law-on-torture-and-enforced-disappearance-undermines-access-to-justice-and-accountability/>.

³⁷ Joint ICJ, TLHR, CrCF Follow-up Submission, 27 March 2018, paras 22 to 26.

³⁸ Ibid, paras 24 to 26. This was noted also in our joint follow-up submission where we also further highlighted other concerns about the composition of the committee, and the fact that there is no clarity about the legal framework governing its work.

Committee conducted field visits to investigate 53 allegations of torture but found that there was no torture as alleged. The Committee also reportedly conducted field visits and collected information into cases of enforced disappearance that were recorded by UN Working Group on Enforced or Involuntary Disappearances and found that there was no enforced disappearance in 11 cases. These 11 cases were subsequently forwarded to the UN Working Group. The Committee, reportedly, is in the process to compiling information for other recorded cases.³⁹

22. Additionally, in at least one case that TLHR is representing,⁴⁰ the alleged victim submitted relevant documents to the Committee in August 2019, but the process was delayed pending the new Cabinet taking office, as the Committee consists of officials drawn from different ministries. On 15 November 2019, the new Committee was appointed by Prime Minister Order No. 339/2562. As of the date of the submission, TLHR and its client have still not received any updates about the progress of the investigation from the Committee.
23. With respect to the investigation into the apparent enforced disappearance of Pholachi "Billy" Rakchongcharoen, on 28 June 2018 the Ministry of Justice's Department of Special Investigations ('DSI') announced that it had decided to recognize the case of Billy as a "Special Case" that must be investigated by the DSI itself.⁴¹ On 3 September 2019, the DSI announced it had located bone fragments inside an oil tank submerged in water near a suspension bridge inside Kaeng Krachan National Park in Phetchaburi province, which they had identified as likely belonging to Billy.⁴² On 11 November 2019, arrest warrants were issued against four officials of Kaeng Krachan National Park. On 23 December 2019, the DSI pressed eight charges, including premeditated murder and concealment of a body, against four suspects. However, on 24 January 2020, public prosecutors suddenly dropped seven murder-related charges against the four accused on the basis that there was insufficient evidence to take the cases to trial. The four suspects are now facing only a minor charge for failing to exercise their official functions (Article 157 of the Criminal Code) because they released Billy instead of handing him over to the police after they took him into custody in April 2014 for collecting wild honey in the park. The case is currently under consideration by the Director-General of the DSI. If the Director-General disagrees with the decision to drop the murder charges, the file will be submitted to the Attorney General for his decision. Such decision would then be final.⁴³

³⁹ RYT9, 'Report on Consideration Regarding Appropriate Recommendations or Guidelines in Preventing and Suppressing Human Rights Violations' (in Thai), 19 November 2019, available at: <https://www.ryt9.com/s/cabt/3069336>

⁴⁰ The case of Mr. Siam Theerawut, a Thai political exile, who disappeared after reportedly extradited from Vietnam. Neither Thai nor Vietnamese authorities acknowledged holding them. See: TLHR, 'Siam's Parents Are Demanding Help From Agencies to Search For Their Son', 14 May 2019, available at: <https://www.tlhr2014.com/?p=12366&lang=en>

⁴¹ ICJ, AI and HRW, 'Thailand: special investigation into apparent enforced disappearance of "Billy" welcome, but much more is needed', 2 July 2018, available at: <https://www.icj.org/thailand-special-investigation-into-apparent-enforced-disappearance-of-billy-welcome-but-much-more-is-needed/>.

⁴² ICJ, 'Thailand: discovery of "Billy's" remains should reinvigorate efforts to identify perpetrator(s)', 4 September 2019, available at: <https://www.icj.org/thailand-discovery-of-billys-remains-should-reinvigorate-efforts-to-identify-perpetrators/>.

⁴³ ICJ, 'Thailand: Six Years after Billy's enforced disappearance, there has been no real progress towards accountability', 17 April 2020, available at: <https://www.icj.org/thailand-six-years-after-billys-enforced-disappearance-there-has-been-no-real-progress-towards-accountability/>; Bangkok Post, 'Prosecutors drop 'Billy' murder charges against park officials', 24 January 2020, available at: <https://www.bangkokpost.com/thailand/general/1842909/prosecutors-drop-billy-murder-charges-against-park-officials>.

24. Notwithstanding Thailand's commitments at international and domestic levels with respect to the abolition of capital punishment,⁴⁴ ICJ, TLHR and CrCF are concerned about the resumption of death penalty in Thailand. In June 2018, Thailand executed a prisoner by lethal injection. Prior to this execution, in practice, there had effectively been a moratorium on capital punishment in the country lasting over nine years. The prisoner was convicted of an aggravated murder that had taken place in 2012. According to Department of Corrections, as of February 2020, 86 prisoners in Thailand were sentenced to death by a final judgment, 54 of whom were drug-related offenders, whereas the other 32 committed other crimes. Out of the 86, 13 are women.⁴⁵

Security-Related Laws

25. On 25 March 2020, Thailand's Prime Minister invoked the Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005) ('Emergency Decree'), and declared an emergency situation in all areas of the country between 26 March and 30 April 2020 to combat the COVID-19 pandemic.⁴⁶ The restrictions include the imposition of a curfew from 10.00 pm to 4.00 am the following day;⁴⁷ prohibition of "assembly, carrying out of activities, or gathering at any place that is crowded", committing "any act which may cause unrest in areas determined by relevant authorities";⁴⁸ and prohibition of presentation or dissemination of information through any media "featuring content on the COVID-19 which is false or may instigate fear among the people, or to intentionally distort information which causes misunderstanding of the emergency situation to the extent of affecting public order or the good morals of people".⁴⁹ Violators can be punished with various punishments, including under Section 18 of the Emergency Decree (imprisonment for a term not exceeding two years or a fine of no more than 40,000 baht, or both);⁵⁰ and under Article 14 of the Commission of Offences Relating to Computer Act B.E. 2550 (2007) ('Computer Crime Act') (imprisonment for a term not exceeding five years or a fine of no more than 100,000 baht, or both).⁵¹
26. Consequently, as of 17 April 2020, there were reports that more than 7,000 people⁵² had been arrested in relation to emergency decree violations, mainly for venturing

⁴⁴ In its third National Human Rights Plan, Thailand aims to replace capital punishment with life imprisonment. See: Ministry of Justice's Rights and Liberties Protection Department, 'The Summary of Thailand's 3rd National Human Rights Plan (2014 - 2018)', available at: http://www.rlpd.go.th/rlpdnew/images/rlpd_1/2556/thaigov_Plan3/10plan3.pdf.

⁴⁵ Department of Corrections, 'Statistics of Prisoners on Death Sentences by the Department of Corrections' (in Thai), available at: <http://www.correct.go.th/executed/index.php>.

⁴⁶ See: Regulation Issued under Section 9 of the Emergency Decree (No. 1), available at: <http://www.mfa.go.th/main/contents/files/news3-20200329-164122-910029.pdf>;

Regulation Issued under Section 9 of the Emergency Decree (No. 2), available at: <http://www.mfa.go.th/main/contents/files/news3-20200403-172644-254060.pdf>.

⁴⁷ Clause 1, Regulation (No.2).

⁴⁸ Clause 5, Regulation (No.1).

⁴⁹ Clause 6, Regulation (No.1).

⁵⁰ In accordance with Section 18 of the Emergency Decree, violators shall be liable to imprisonment for a term not exceeding two years or to a fine of no more than 40,000 baht, or to both.

⁵¹ For more information, ICJ, 'Dictating the Internet: Curtailing Free Expression, Opinion and Information Online in Southeast Asia', 11 December 2019, available at: <https://www.icj.org/wp-content/uploads/2019/12/Southeast-Asia-Dictating-the-Internet-Publications-Reports-Thematic-reports-2019-ENG.pdf>.

⁵² On 14 April 2019, the Court of Justice announced that between 3 and 13 April 2020, 9,007 cases related to the Emergency Decree, Disease Control Act, and Price Control Act, were brought to Court, 8,515 of which were adjudicated. See: Information and Public Relations Division, Court of Justice, 'Secretary of the Court of Justice Reveled Statistic of Cases 10

in public during the curfew. Among them, 109 people had reportedly assembled in groups drinking alcohol or had been involved in illicit activities, and 39 people were charged for disseminating “false information”. In at least one case, people donating food were charged with violating the ban on public gatherings to contain the outbreak as they had allegedly failed to comply with social distancing measures after their charitable food handouts in Bangkok caused many people to assemble together to receive free food, and after a fight had erupted among some of them.⁵³ Additionally, at least two homeless persons in Chiang Mai province were arrested and made to confess to violating the curfew ban without a lawyer present, and were then convicted by the Court. One of them was arrested when returning to the public market where he usually sleeps.⁵⁴ The police have warned that they would seek maximum jail terms from the court for those caught defying emergency decree measures.⁵⁵ However, apart from the above-noted statistics provided by a number of justice sector agencies, it is still unclear how many people were punished with imprisonment or put into prison for their failure to pay fines; it is also difficult to assess the proportionality of the punishments imposed against them. Nevertheless, the Supreme Court president issued a statement noting that judges should refrain from handing jail terms since placing people in prison may increase spread of the coronavirus to detention facilities.⁵⁶

27. ICJ, TLHR and CrCF are concerned that the above-noted regulations – which prohibit the commission of any act that may cause unrest in determined areas and the dissemination of any allegedly false or intentionally distorted information or of information that may instigate fear among people – may constitute a blanket restriction on fundamental freedoms, including the rights to free expression, opinion, information, privacy and freedom of assembly and association. With respect to freedom of expression, information and privacy online, the ICJ has urged States, including Thailand, to respect and protect human rights not only offline but also online, by ensuring that avoidance of adverse impacts on these rights are front and center in implementing measures to counter misinformation about the virus.⁵⁷ The curfew, meanwhile, limits the rights to association and assembly without explicitly or foreseeably providing exemptions for civil society actors, particularly those monitoring human rights, trade unions, social services providing humanitarian assistance, and journalists covering the management of the crisis.

Days After Imposing Curfew, Found that Number of Violators of the Emergency Decree in COVID-19 Context are Still High’ (in Thai), 14 April 2020, available at: <https://iprd.coj.go.th/th/content/category/detail/id/10241/iid/189547>.

⁵³ Bangkok Post, ‘Food donors face charges in brawl-marred charity effort’, 21 April 2020, available at: <https://www.bangkokpost.com/thailand/general/1903725/food-donors-face-charges-in-brawl-marred-charity-effort>

⁵⁴ TLHR, ‘Chiang Mai’s rough-sleeping homeless arrested for violating curfew ban’, 22 April 2020, available at: <https://www.tlhr2014.com/?p=17297&lang=en>. One of them was reportedly sentenced to six months imprisonment, and was fined 1,500 THB (approx. 46 USD). The imprisonment was suspended for one year. He was expected to be taken and stayed in prison for 3 days for failing to pay fines (the rate of 500 THB or 15.5 USD per day). However, the Court overturned their judgment, said it was his first time committing the offence, and decided not to transfer him to prison.

⁵⁵ Khaosod English, ‘Police Will Seek Max Punishment For Decree Violators’, 3 April 2020, available at: <https://www.khaosodenglish.com/news/crimecourtscalamity/2020/04/03/police-will-seek-max-punishment-for-decree-violators/>.

⁵⁶ Khaosod English, ‘7,000 Curfew Arrests Made Over the Past Two Weeks: Police’, 17 April 2020, available at: <https://www.khaosodenglish.com/news/crimecourtscalamity/2020/04/17/7000-curfew-arrests-made-over-the-past-two-weeks-police/>.

⁵⁷ ICJ, ‘Southeast Asia: States must respect and protect rights in combating misinformation online relating to COVID-19’, 1 April 2020, available at: <https://www.icj.org/wp-content/uploads/2020/04/SEAsia-COVID-and-Rights-Online-Press-Statement-2020-ENG.pdf>.

28. The ICJ, TLHR and CrCF also concerned about several provisions of the Emergency Decree. In this regard, the ICJ has expressed concern and made recommendations since 2005 in order to render the exercise of the power under the Emergency Decree lawful and proportionate, in a manner consistent with Thailand's obligations under international law. The ICJ's recommendations include ensuring that the necessity of the law be continually re-assessed, subject to review by the courts,⁵⁸ and a total prohibition on granting immunity to officials responsible for any criminal acts carried out in the exercise of their responsibilities to implement the law.⁵⁹
29. Thai courts have interpreted the Emergency Decree as preventing them from judicially reviewing measures that have imposed pursuant to the Decree. On 26 March 2020, an activist filed a petition with the Administrative and Civil Court demanding legal action against the Thai government for imposing a new border rule requiring Thai nationals to have embassy and health certificates for their flights home, which effectively stranded many Thai citizens overseas. On 2 April 2020, the Central Administrative Court refused to admit the case because, under the Emergency Decree⁶⁰, the imposed measures are not subject to review by the courts.⁶¹ On 5 April 2020, Bangkok Civil Court also dismissed the case on the basis that the Order was issued by the Prime Minister with whom such power under the Emergency Decree is vested.⁶² So far, there has been no judicial scrutiny over measures imposed under the Emergency Decree.
30. In southern border provinces, Martial Law B.E. 2457 (1914) ('Martial Law') and the Emergency Decree are still in place in most districts. While, paragraph 9 of the Thailand's Response notes that the Emergency Decree was revoked and the Internal Security Act B.E. 2551 (2008) ('ISA')⁶³ applied instead in Betong district, Yala province. In this respect, the ICJ, TLHR and CrCF highlight that, while the powers provided by the ISA are more limited in scope and less restrictive of rights than those under the Emergency Decree or Martial Law, concerns about the ISA remain. In a 2010 analysis of the ISA,⁶⁴ the ICJ set out three main concerns with respect to the ISA: (i) that many definitions and provisions are vague and overbroad, potentially criminalizing a wide range of behaviours that pose no security threat; (ii) that fundamental rights are at risk of being violated, especially rights such as the right to liberty and security of person, fair trial and due process, and to freedom of movement, association and expression; and (iii) that sweeping powers granted

⁵⁸ Subject to Section 16 of the Emergency Decree, "A Regulation, Notification, order or an act under this Emergency Decree shall not be subject to the law on administrative procedures and the law on the establishment of Administrative Court and Administrative Court Procedure".

⁵⁹ ICJ, 'Thailand: measures under the Emergency Decree to Address The COVID-19 Outbreak Must Conform to International Law', 24 March 2020 available at: <https://www.icj.org/thailand-measures-under-the-emergency-decree-to-address-the-covid-19-outbreak-must-conform-to-international-law/>.

⁶⁰ The Rule was initially imposed by the Civil Aviation Authority of Thailand in their Notification dated 19 March 2020, available at: <http://www.mfa.go.th/main/contents/files/news3-20200329-164122-910029.pdf>. On 20 March 2020, the Emergency Decree also imposed measure with the same requirements.

⁶¹ BangkokbizNews, 'Central Administrative Court Rejected to Petition about Fit to Fly Announcement to Combat COVID-19' (in Thai), 21 April 2020, available at: <https://www.bangkokbiznews.com/news/detail/874190>.

⁶² Thai Post, 'Civil Court Dismissed Case, State can Asked for Fit to Fly' (in Thai), 5 April 2020, available at: <https://www.thaipost.net/main/detail/62089>.

⁶³ The ISA is currently in force in Tapa, Sabayoi, Nathawi and Jana districts (Songkhla province), Mae Lan District (Pattani province), Baetong district (Yala province), and Sungai Kolok district (Narathiwat province)

⁶⁴ See ICJ, 'Thailand's Internal Security Act – Risking the Rule of Law?', February 2010, see pp. i, ii. Available at: <https://www.icj.org/thailands-internal-security-act-risking-the-rule-of-law/>

to security forces risk undermining the principle of civilian authority that is at the heart of democratic governance.

31. Notably, HNCPO Order No. 51/2560, published on the Government Gazette on 22 November 2017, has redefined the term "internal security" of the ISA to include "disaster, which occurs or is likely to occur, under the law on Disaster Prevention and Mitigation". The power of the Internal Security Operations Command ('ISOC') under the ISA was also broaden. Among others, it expanded ISOC's duties to include "monitoring, investigating, coordinating, and evaluating situations...outside the Kingdom, which may give rise to a threat to internal security".⁶⁵ It also created ISOC at regional level, led by the Chief of the Regional Army, and at provincial level, led by the Governor; and granted them the power to "direct, integrate, and evaluate the activities of Regional/Provincial ISOC", determine "directions on the implementation of the Internal Security Plan" and "measures that are suitable to the situation in the region/province".⁶⁶ This includes the power to oversee other members of the Regional and Provincial ISOC, such as civilian administrative authorities, as well as public prosecutors and polices, in implementing the internal security plan and for the maintenance of internal security.⁶⁷ There were reports that in at least three provinces, ISOC was the key agent in overseeing and approving requests to organize the anti-government running events - the "Run Against Dictatorship" - in January 2020.⁶⁸

Alleged Human Rights Violations

32. Regarding the detention of suspects in military facilities in southern border provinces, in 2019 alone, Duay Jai Group, a local human rights group, documented at least 168 cases of detentions under Martial Law and the Emergency Decree. This number comprises at least five children, eight women, and 10 human rights activists. In its report, Duay Jai Group also recorded that, between 2005 and 2018, 127 minors were reportedly arrested and/or detained by virtue of the Emergency Decree. Only 16 of them were ever prosecuted.⁶⁹ There were also reports that a number of women, who were either relatives or associates of those detained under Martial Law and/or under Emergency Decree, in turn, were themselves detained at military facilities for interrogation under Martial Law and the Emergency Decree.⁷⁰
33. Between April and December 2018, in southern border provinces, CrCF and its partners received allegations of torture from 12 individuals who claimed to be victims themselves. The torture reportedly took place during arrest and at detention facilities in the military premises.
34. In 2019, there were two major allegations of torture in the southern border provinces. The first alleged victim was Mr. Masukri Salae, a suspected insurgent, who was admitted to Ingkhayutthaborihan Camp Hospital and, later, to Pattani Hospital on 16 March 2019. He suffered a stroke in the left side of his brain as a result of falling on the Camp's bathroom floor. He had been arrested and detained under Martial Law at Ingkhayutthaborihan Military Camp, Pattani province, since 14

⁶⁵ Article 7, ISA

⁶⁶ Article 11/2 and 13/2, ISA

⁶⁷ TLHR, 'The Power of the Military Over Civilians Remains: Five glaring issues and the change of ISOC's role in the aftermath of NCPO's dissolution', 26 September 2019, available at: <https://www.tlhr2014.com/?p=13935&lang=en>

⁶⁸ TLHR, 'Run With Obstacles: Overview of the Restrictions that Were Opposed on the Run Against Dictatorship Throughout Thailand', 29 January 2020, available at: <https://www.tlhr2014.com/?p=15773>.

⁶⁹ Duay Jai Group, 'Human Rights Situation in southern border provinces, Thailand, 2019', March 2020 (Advance Unedited Version). The statistics based on the information obtained from the Southern Border Provinces Police Operation Center and the information that the Group collected by themselves.

⁷⁰ Ibid.

37. Apart from the alleged victims in southern border provinces, there were also reports of extrajudicial killings against indigenous peoples residing in Thailand's northern and western border provinces. Most victims are suspects of drug-related offences. Similar to the situation in southern border provinces, in most cases, including cases where victims and/or their families have received reparations in the form of monetary compensation, perpetrators have not been brought to justice. For example, on 15 February 2017, Mr. Abe Saemu, from the Lisu hill tribe, was killed by a military officer in the Chiang Dao district of Chiang Mai province in an attempt to arrest him on suspicion of involvement in drug offences. On 17 March 2017, Mr. Chaiyaphum Pasae, a Lahu youth activist, was killed by a military officer in the Chiang Dao district of Thailand's northern Chiang Mai province in March 2017. The killing took place during an attempt to arrest him as an alleged drug suspect. Officials claimed Chaiyaphum Pasae had resisted arrest and was subsequently shot in "an act of self-defence".⁷⁶ On 23 July 2019, Mr. Jajue Ja-or, from the Lahu hill tribe, was shot dead by police officers from Wiang Haeng Police Station during a drug search in Baan Huay Krai Mai in Wiang Haeng District, Chiang Mai Province. On 22 May 2019, the mothers of Mr. Abe Saemu and Mr. Chaiyaphum Pasae filed civil lawsuits against the Royal Thai Army to seek compensation.⁷⁷ On 5 March 2020, Bangkok Civil Court (Court of First Instance) ordered the Royal Thai Army to pay 824,180 THB (approx. 25,375 USD) plus interest of 7.5% per year to the mother of Mr. Abe Saemu.⁷⁸ The civil case of Mr. Chaiyaphum Pasae is pending before Chiang Mai Provincial Court. Nevertheless, for these three cases, no progress has been reported with respect to a criminal investigation, and no perpetrators have been brought to justice.

Threats and reprisals against persons working to bring to light cases of alleged torture, ill-treatment and enforced disappearances

38. In one case that was highlighted in their joint follow-up submission in March 2018, ICJ, TLHR and CrCF were informed in February 2019 that the complaints lodged against two editors of the 'Manager Online' news website were withdrawn, following a settlement that obliges the news website to publish a 'clarification statement' drafted by ISOC Region 4 Forward, who had originally brought charges of defamation by publication, under article 328 of Thailand's Criminal Code, and under Article 14(2) of the Computer Crime Act against the website's editors for publishing a story about alleged torture and ill-treatment of a suspected insurgent in a military camp on their website.⁷⁹ The clarification statement stated that "after examining all facts", they found that "it is not true" and expressed "remorse about (our) wrongdoing by publishing an article that defame officers of the ISOC 4 Forward, and damaged their reputation" and urged all groups "to stop bringing security problems in the region to defame the officers for their own benefit or their political interests and to stop deceiving the public with distorted information."⁸⁰ The ICJ, TLHR and CrCF note that such a settlement outside of the courts does nothing to

⁷⁶ ICJ, 'Thailand: ICJ co-hosts discussion on addressing extrajudicial killings', 15 July 2018, available at: <https://www.icj.org/thailand-icj-co-hosts-discussion-on-addressing-extrajudicial-killings/>; ICJ, 'Thailand: ICJ co-hosts workshop on extrajudicial killings in the context of ethnic and religious minorities', 18 December 2019, available at: <https://www.icj.org/thailand-icj-co-hosts-workshop-on-extrajudicial-killings-in-the-context-of-ethnic-and-religious-minorities/>.

⁷⁷ The Nation, 'Mothers of slain Lahu Tribesmen Sue the Army', 22 May 2019, available at: <https://www.nationthailand.com/news/30369842>.

⁷⁸ Prachatai, 'Court Ordered the Royal Thai Army to Provide Compensation to 'Abe Saemu' 824,180 Baht Plus Interest Of 7.5% Per Year, Who Was Shot Dead' (in Thai), 5 March 2020, available at: https://www.matichon.co.th/local/crime/news_2029575.

⁷⁹ Joint ICJ, TLHR, CrCF Follow-up Submission, 27 March 2018, para 39.

⁸⁰ See Manager Online, 'Clarification Statement' (in Thai), 14 February 2019, available at: <https://mgronline.com/south/detail/9620000015540>.

allay concern that the charges were brought to legally harass or threaten the news website in the first place.

39. In another case, on 17 July 2018, Pol.Sen.Sgt.Maj.Aticom Sriphutto filed a criminal complaint against Ritthirong Chuenchit claiming that the latter had made a false accusation and given a false testimony in the court. Rithirong Chuenchit had previously maintained that he had been tortured into confessing to a pickpocketing charge, and had then sued Pol.Sen.Sgt.Maj.Aticom and six other police officers.⁸¹ The case is currently pending before the Appeal Court.

Recommendations

40. The ICJ, TLHR and CrCF reiterate that Thailand should implement without delay the Committee's recommendations in paragraphs 8 and 22 of its Concluding Observations. The three organizations further reiterate their recommendations submitted on 27 March 2018 to the Committee.⁸²

⁸¹ On 28 September 2018, Prachinburi Provincial Court convicted one officer but acquitted Pol.Sen.Sgt.Maj.Aticom and other five defendants. See: CrCF, 'Prachinburi Provincial Court Sentencing Police Officials to One Year of Imprisonment and 8,000-baht-fine for Committing Torture Against Mr. Ritthirong Chuenchit to Force Him to Confess to Pickpocketing Charges', 5 October 2018, available at: <https://voicefromthais.wordpress.com/2018/10/05/cross-cultural-foundation-press-release-prachinburi-provincial-court-sentencing-police-officials-of-the-prachinburi-provincial-polices-investigation-division-to-one-year-of-imprisonment-and/>.

⁸² Joint ICJ, TLHR, CrCF Follow-up Submission, 27 March 2018, paras 43, 44.