



Thailand

ICCPR Submission – February 2017

Human Rights Watch is a nongovernmental organization that monitors and reports on human rights issues in more than 90 countries around the world. Human Rights Watch has reported on Thailand for nearly three decades.

Since the ousting by the military of a democratically elected government on May 22, 2014, the National Council for Peace and Order (NCPO) junta, led by Prime Minister Gen. Prayut Chan-ocha, has severely repressed fundamental rights and freedoms with total impunity. Even though nationwide enforcement of martial law was lifted on April 1, 2015, many orders and announcements issued by the NCPO have seriously restricted fundamental civil and political rights, including: freedom of association, the right to a fair trial, freedom of opinion and expression, and freedom of peaceful assembly.

This submission details Human Rights Watch's main concerns over the ongoing deterioration of human rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR), particularly:

Article 2 - Access to justice or redress

Articles 9 and 10- Freedom from arbitrary arrest and detention

Article 14 – Equality before the law and fair trial guarantees

Article 19 - Freedom of opinion and expression

Article 21 – Freedom of peaceful assembly

Unchecked and Unaccountable Powers of the NCPO – Article 2

Several provisions of the NCPO's interim constitution, promulgated on July 22, 2014, violate Thailand's obligations under Article 2 of the ICCPR, which guarantees the right to an effective remedy to any person

whose rights are violated. The interim constitution grants to the junta broad authority to carry out policies and actions without any effective oversight or accountability for human rights violations.¹

Interim constitution, Section 44 states: “Where the head of the NCPO is of the opinion that it is necessary for the benefit of reforms in any field, or to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act that undermines public peace and order or national security, the monarchy, national economics or administration of State affairs,” the head of the NCPO is empowered to “issue orders, suspend or act as deemed necessary. ... Such actions are completely legal and constitutional.” In addition, Section 47 declares that all such orders are “deemed to be legal, constitutional, and conclusive.” Section 48 further provides that NCPO members and anyone carrying out actions on behalf of the NCPO “shall be absolutely exempted from any wrongdoing, responsibility, and liabilities.”

The new constitution, which was approved in Thailand’s August 7, 2016 referendum, ensures that the junta will not be held accountable for the long list of rights violations committed since it took power.² It also strengthens and prolongs military control of the government even after an election that the junta promises to hold in 2018.

Censorship and Restrictions on Free Expression, Association, and Peaceful Assembly – Articles 19 and 21

NCPO Announcement 97/2014 issued on July 18, 2014 compels all news outlets to distribute the information issued by the NCPO, and therefore is inconsistent with Thailand’s obligations under Article 19 of the ICCPR regarding the right to freedom of opinion and expression. In addition, the announcement also bans “criticism of the work of the NCPO” and the dissemination of “information that could harm national security, cause confusion, or incite conflict or divisions in the country.” Failure to comply with these provisions can result in the immediate shutdown of the offending news outlet. NCPO Order 3/2015 issued on April 1, 2015 further prohibits the propagation of news or the distribution of any publication that contains information that is deemed by the authorities to be “intentionally distorted to cause public misunderstanding that affects national security or public order.”

Immediately after the May 2014 coup, the junta forced satellite TV channels and community radio stations associated with all political factions off the air. Some were later allowed to resume broadcasting provided they excluded negative comments about the junta or the situation in Thailand. After the lifting of martial law powers in March 2015, the junta has maintained censorship by using the provisions of orders and announcements issued under Section 44 of the interim constitution. The NCPO has also suppressed the views of persons openly

¹ [“Thailand: Junta Leader Seeks Sweeping Powers”, Human Rights Watch news release, March 31, 2015, https://www.hrw.org/news/2015/03/31/thailand-junta-leader-seeks-sweeping-powers](https://www.hrw.org/news/2015/03/31/thailand-junta-leader-seeks-sweeping-powers)

² “Thailand: New Charter Enshrines Military Rule”, Human Rights Watch news release, August 9, 2016, <https://www.hrw.org/news/2016/08/09/thailand-new-charter-enshrines-military-rule>

critical of its policies and practices by arresting them, and trying them in civilian and military courts. For example, on April 28, 2016, authorities arrested and charged eight people with sedition and computer crimes for creating and posting satirical comments and memes mocking Prime Minister Prayut on a Facebook parody page.

United Nations Secretary-General Ban Ki-moon raised concerns during a telephone conversation with Prime Minister Prayut on June 20, 2016 about government repression ahead of Thailand's constitutional referendum.³ On that same day, authorities charged 19 leaders of the United Front for Democracy against Dictatorship (UDD), known as the Red Shirts, with violating the NCPO's ban on public gatherings of more than five people, simply for attending the opening a referendum monitoring center in Bangkok. At least 142 UDD supporters have faced similar charges across the country prior to the referendum. In addition, authorities detained a number of people who posted online commentary criticizing the draft constitution.⁴ Many activists, academics, and politicians were threatened with harsh penalties (including a prison sentence of up to 10 years) under the 2016 Referendum Act, simply for exercising their freedom of expression by urging citizens to vote to reject the draft constitution.⁵

The junta also has broadly used sedition charges, which carry up to seven years in prison, to prosecute those who express opposition to military rule. In March 2016, the military in Chiang Mai province arrested and charged Theerawan Charoensuk with sedition for posting a photo of herself on Facebook, showing her holding a red bowl inscribed with Thai New Year greetings from former Prime Ministers Thaksin Shinawatra and Yingluck Shinawatra. Since the coup, at least 38 people have been charged with sedition.⁶ On September 27, 2016, Sirikan Charoensiri, a lawyer at Thai Lawyers for Human Rights, received a police summons following accusations filed by the military that she violated NCPO Order 3/2015, prohibiting the gathering of five or more people for political purposes, and committed a sedition offense in relation to her provision of legal aid to pro-democracy activists.⁷

The NCPO has regularly blocked or disrupted public discussions on the political and human rights situation, as well as expression of differences in political opinions, alleging that these events threatened national security.

³ "Readout of the Secretary-General's phone call with H.E. Mr. Prayut Chan-O-Cha, Prime Minister of Thailand", Statement by the United Nations Secretary General, June 20, 2016, <http://www.un.org/sg/offthecuff/index.asp?nid=4584>

⁴ "Thailand: Ex-Minister Detained for Rejecting Draft Charter", Human Rights Watch news release, April 20, 2016, <https://www.hrw.org/news/2016/04/20/thailand-ex-minister-detained-rejecting-draft-charter>

⁵ "Thailand: Activists, Journalist Arrested for Vote-No Campaign", Human Rights Watch news release, July 12, 2016, <https://www.hrw.org/news/2016/07/12/thailand-activists-journalist-arrested-vote-no-campaign>

⁶ "Thailand: Sedition Charge for Red Bowl Photo", Human Rights Watch news release, March 30, 2016, <https://www.hrw.org/news/2016/03/30/thailand-sedition-charge-red-bowl-photo>

⁷ "Thailand: Immediately Drop Sedition Case Against Human Rights Lawyer", Human Rights Watch news release, October 3, 2016, <https://www.hrw.org/news/2016/10/03/thailand-immediately-drop-sedition-case-against-human-rights-lawyer>

Police and soldiers used NCPO orders to cancel the launch of reports by Human Rights Watch, Amnesty International, and the Thai Lawyers for Human Rights. Acting on the NCPO's orders, Thai authorities have banned many discussions at universities and other public venues about human rights, democracy, the monarchy, and the government's performance. The government has blocked more than 200 websites as threats to national security⁸

Criticizing the monarchy is a serious criminal offense in Thailand. Persons charged with *lese majeste* are routinely denied bail and held in prison for many months awaiting trial, such as the case of prominent pro-democracy student activist Jatupat Boonphattharaksa, who faces *lese majeste* and computer crimes charges for posting on his Facebook page a profile of Thailand's new monarch, King Maha Vajiralongkorn Bodindradebayavarangkun, published by the BBC Thai language service.⁹ Thai authorities deemed the article to be critical of the monarchy and blocked it from viewing in Thailand. Jatupat is singled out for prosecution despite the fact that more than 2,800 other people had also shared the article and none of them have been arrested.

Thai authorities have brought at least 68 *lese majeste* cases since the May 2014 coup, mostly for online commentary. On December 14, 2015, Thai authorities brought *lese majeste* charges in military court against a person for spreading sarcastic Facebook images and comments that were deemed to be mocking the late King Bhumibol Adulyadej's pet dog.¹⁰ In most *lese majeste* cases, convictions result in harsh sentences. In August 2015, Pongsak Sriboonpeng received 60 years in prison for his alleged *lese majeste* Facebook postings (later reduced to 30 years when he pleaded guilty), the longest recorded sentence for *lese majeste* in Thailand's history.

Thailand's new Computer-Related Crime Act, adopted by the National Legislative Assembly on December 16, 2016, gives overly broad powers to the government to restrict free speech and enforce surveillance and censorship.¹¹ Human Rights Watch has also repeatedly raised concerns that Thai authorities, private companies, and individuals often use the Computer-Related Crime Act to retaliate by filing defamation lawsuits against those reporting human rights violations, accusing activists and victims of making false statements as

8 "Letter to Thailand Prime Minister on UN Security Council Candidacy", Human Rights Watch news release, June 27, 2016, <https://www.hrw.org/news/2016/06/27/letter-thailand-prime-minister-un-security-council-candidacy>

9 "Thailand: Activist Unjustly Jailed for 'Insulting Monarchy'", Human Rights Watch news release, January 22, 2017, <https://www.hrw.org/news/2017/01/22/thailand-activist-unjustly-jailed-insulting-monarchy>

10 "Thailand: Worker Charged for Insulting King's Dog", Human Rights Watch news release, December 18, 2015, <https://www.hrw.org/news/2015/12/18/thailand-worker-charged-insulting-kings-dog>

11 "Thailand: Cyber Crime Act Tightens Internet Control", Human Rights Watch news release, December 21, 2016, <https://www.hrw.org/news/2016/12/21/thailand-cyber-crime-act-tightens-internet-control>

seen in the cases of Phuket Wan journalists,¹² Pornpen Khongkachonkiet,¹³ Andy Hall,¹⁴ and Naritsarawan Kaewnopparat.¹⁵

NCPO Announcement 7/2014 is inconsistent with Thailand's obligations under ICCPR Article 21, which guarantees the right to peaceful assembly. The announcement, issued on May 22, 2014, bans public gatherings of more than five people and provides a punishment for violators of one year in prison or a 20,000 baht (US\$570) fine, or both. NCPO Order 3/2015, which was issued on April 1, 2015, further bans political gatherings of more than four people, with a prescribed penalty of a prison term of up to six months or a 10,000 baht (US\$285) fine, or both.

The NCPO has acted to selectively enforce the ban on public gatherings of more than five people, with anti-government activities facing severe restrictions while pro-government or non-political events proceed without difficulty. Protesters who have peacefully expressed disagreement or defiance of the government have been arrested and sent to military courts, where they could face up to two-years in prison. In June 2015, police and soldiers in Bangkok arrested 14 activists from the New Democracy Movement and charged them with sedition and violating the junta's ban on public assembly.¹⁶ If found guilty of sedition under Section 116 of the Penal Code, they face up to seven years in prison. Hundreds of people have been arrested since the May 2014 coup for organizing or taking part in public gatherings or organizing other anti-junta activities.

Secret and Arbitrary Detention and Military Courts – Articles 2, 9, and 14

NCPO Order 3/2015 issued on April 1, 2015 and Order 13/2016 issued on March 29, 2016, provide powers to the military to arrest, detain, and interrogate civilians for a wide range of offenses.¹⁷ Under these orders, any person can be held for up to seven days in unrecognized places of detention without any judicial oversight. Measures under Orders 3/2015 and 13/2016 have been implemented without safeguards against torture or other forms of abuse, and with explicit guarantees of no legal or other accountability for human rights violations against those in detention.

¹² "Thailand: Drop Charges Against Phuket Journalists", Human Rights Watch news release, April 26, 2015, <https://www.hrw.org/news/2015/04/16/thailand-drop-charges-against-phuket-journalists>

¹³ "Thailand: Drop Case Against Rights Defenders", Human Rights Watch news release, June 8, 2016, <https://www.hrw.org/news/2016/06/08/thailand-drop-case-against-rights-defenders>

¹⁴ "Thailand: Labor Activist Convicted for Reporting Abuses", Human Rights Watch news release, September 20, 2016, <https://www.hrw.org/news/2016/09/21/thailand-labor-activist-convicted-reporting-abuses>

¹⁵ "Thailand: Torture Victim's Outspoken Niece Arrested", Human Rights Watch news release, July 27, 2016, <https://www.hrw.org/news/2016/07/27/thailand-torture-victims-outspoken-niece-arrested>

¹⁶ "Thailand: Junta Arrests 14 Student Activists", Human Rights Watch news release, June 27, 2015, <https://www.hrw.org/news/2015/06/27/thailand-junta-arrests-14-student-activists>

¹⁷ "Thailand: Rights Groups Condemn Junta's Sweeping Powers Order", Human Rights Watch news release, April 5, 2016, <https://www.hrw.org/news/2016/04/05/thailand-rights-groups-condemn-juntas-sweeping-powers-order>

Since the May 2014 coup, military authorities have summoned at least 1,340 activists, political party supporters, journalists, and human rights defenders for questioning and, in NCPO parlance, “adjusting” of their political attitude. Failure to abide by an NCPO summons is a criminal offense subject to trial in military courts. Under Orders 3/2015 and 13/2016, the military can secretly detain people without charge or trial and interrogate them without access to lawyers or safeguards against mistreatment. Some have been held longer than the seven-day limit for administrative detention, raising concerns about enforced disappearance and other ill-treatment.¹⁸ On January 20, 2016, soldiers from the 2nd Battalion of the army’s 2nd Infantry Regiment snatched prominent pro-democracy student activist Sirawith Seritiwatas while he was walking with his friends outside the Thammasat University’s Rangsit Campus. Soldiers pushed Sirawith into a pickup truck with no license plate and drove him away to an unknown destination. Efforts by family, friends, and NGO activists to locate him were unsuccessful. The NCPO denied knowledge of Sirawith’s arrest and his whereabouts until soldiers handed him over to police custody on the next day. While in custody of those soldiers, Sirawith was blindfolded and beaten.¹⁹ Human Rights Watch submitted a letter to the Thai government on November 24, 2015, raising serious concerns regarding conditions at the 11th Military Circle military base after the deaths of fortune teller Suriyan Sucharitpolwong and Police Maj. Prakrom Warunprapa – both charged with *lese majeste* – during their detention there.²⁰ In response to these and other cases, the NCPO summarily dismissed allegations that the military has tortured and ill-treated detainees – but it has yet to provide any credible evidence to rebut these claims. At time of writing, 45 civilians are detained at the remand facility inside the 11th Military Circle military base in Bangkok without effective safeguards against abuse.

The NCPO has also compelled persons released from military detention to sign a written agreement that they will not make political comments, become involved in political activities, or travel overseas without permission – all clear violations of their human rights. Detained persons are told by the NCPO that failure to comply with such agreements could result in a new detention or a sentence of two years in prison.

NCPO Announcement 37/2014 issued on May 25, 2014 gives military courts jurisdiction over the trials of civilians for various criminal offenses, including violation of Section 112 of Thailand’s Penal Code regarding *lese majeste* and Section 116 regarding sedition. In addition, individuals who violate the NCPO’s orders are also subject to trial by military court. On September 12, 2016, Prime Minister Gen. Prayut revoked under Announcement 37 and other two NCPO announcements that empowered military courts to try civilians for

¹⁸ “Thailand: Account for ‘Disappeared’ Political Activist”, Human Rights Watch news release, June 18, 2014, <https://www.hrw.org/news/2014/06/18/thailand-account-disappeared-political-activist>

¹⁹ “Thailand: Investigate Army Abduction of Student Activist”, Human Rights Watch news release, January 22, 2016, <https://www.hrw.org/news/2016/01/22/thailand-investigate-army-abduction-student-activist>

²⁰ “Joint Letter to Permanent Mission of Thailand to the UN”, Human Rights Watch news release, November 24, 2015, <https://www.hrw.org/news/2015/11/24/joint-letter-permanent-mission-thailand-un>

national security offenses, including *lese majeste* and sedition.²¹ However, the action is not retroactive and does not affect the more than 1,800 cases already brought against civilians in military courts across Thailand.²²

As Thai authorities continue to use arbitrary arrest and secret detention, the government of Prime Minister Prayut has not met his pledge to make enforced disappearance a crime under Thai laws.²³ Thailand signed the International Convention for the Protection of All Persons from Enforced Disappearance in January 2012, but has yet to ratify the treaty. Since 1980, the United Nations Working Group on Enforced or Involuntary Disappearances has recorded 82 cases of enforced disappearance in Thailand. Many of these cases implicated Thai officials, including the disappearances of prominent Muslim lawyer Somchai Neelapaijit in March 2004,²⁴ and ethnic Karen activist Por Cha Lee “Billy” Rakchongcharoen in April 2014.²⁵ None of these cases has been successfully resolved.

Lack of Accountability for Violations of Human Rights and Humanitarian Law – Article 2

Thailand’s security forces have committed serious human rights violations with impunity. From March to May 2010, political confrontations between the United Front for Democracy against Dictatorship (UDD), known as the “Red Shirts,” and the government of then-Prime Minister Abhisit Vejjajiva, escalated into violence in Bangkok and several provinces. At least 99 people were killed and more than 2,000 were injured. The Justice Ministry’s Department of Special Investigation (DSI) issued a finding in September 2012 indicating the military was responsible for 36 deaths.

Human Rights Watch’s 2011 report “Descent into Chaos: Thailand’s 2010 Red Shirt Protests and the Government Crackdown” found that the high number of casualties – including of unarmed demonstrators, volunteer medics and first responders, reporters, photographers, and bystanders – resulted in part from the enforcement of “live fire zones” around the UDD protest sites in Bangkok, where sharpshooters and snipers were deployed by the military.²⁶ Human Rights Watch also documented that some elements of the UDD, including armed “Black Shirt” militants, committed deadly attacks on soldiers, police, and civilians. Some UDD leaders incited violence with inflammatory speeches to demonstrators, urging their supporters to carry out riots, arson attacks, and looting.

While UDD leaders and supporters face serious charges for criminal offenses, Thai authorities have failed to adequately investigate or hold accountable the soldiers and commanding officers responsible for unlawfully

²¹ Announcement 37 by Prime Minister Gen. Prayut, September 12, 2016, <http://www.ratchakitcha.soc.go.th/DATA/PDF/2559/E/204/40.PDF>

²² “Thailand: No New Military Trials of Civilians”, Human Rights Watch news release, September 13, 2016, <https://www.hrw.org/news/2016/09/13/thailand-no-new-military-trials-civilians>

²³ “Thailand: Break Silence on Day of the ‘Disappeared’”, Human Rights Watch news release, August 29, 2016, <https://www.hrw.org/news/2016/08/29/thailand-break-silence-day-disappeared>

²⁴ “Thailand: 12 Years Bring No Answers”, Human Rights Watch news release, March 10, 2016, <https://www.hrw.org/news/2016/03/10/thailand-12-years-bring-no-answers>

²⁵ “Thailand: Prominent Activist Feared ‘Disappeared’”, Human Rights Watch news release, April 20, 2016, <https://www.hrw.org/news/2014/04/20/thailand-prominent-activist-feared-disappeared>

²⁶ “Descent into Chaos”, Human Rights Watch report, May 3, 2011, <https://www.hrw.org/report/2011/05/03/descent-chaos/thailands-2010-red-shirt-protests-and-government-crackdown>

shooting civilians. Prime Minister Prayut has publicly stated on many occasions that soldiers should not be condemned for the casualties they caused during the 2010 political violence.

There has been little progress in criminal investigations of the alleged abuses committed by the pro-military the People's Alliance for Democracy (PAD) in 2008 and People's Democratic Reform Committee (PDRC) in 2013-2014, or efforts to seek compensation for damages caused by their protests.

Since January 2004, more than 6,000 people have been killed in a brutal internal armed conflict in Thailand's southern border provinces of Pattani, Yala, and Narathiwat. Extrajudicial killings, enforced disappearances, arbitrary detentions, and torture have occurred regularly as part of the government's counterinsurgency campaign and in reprisals for insurgent attacks on the ethnic Thai Buddhist population and security personnel. No member of the security forces has been criminally prosecuted for human rights abuses in the southern border provinces.

Successive Thai governments have shown no interest in investigating more than 2,000 extrajudicial killings related to former Prime Minister Thaksin Shinawatra's "war on drugs" in 2003.²⁷

²⁷ "Not enough graves", Human Rights Watch report, July 7, 2004, <https://www.hrw.org/report/2004/07/07/not-enough-graves/war-drugs-hiv/aids-and-violations-human-rights>