



**JOINT FOLLOW-UP 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 THE COUNTRY'S SECOND PERIODIC REPORT AT ITS 119<sup>TH</sup> SESSION**

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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.*

*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.*

Submitted on 27 March 2018

**Joint Follow-up 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 the Country's Second Periodic Report at its 119<sup>th</sup> Session**

1. At its 119<sup>th</sup> session, the Human Rights Committee ('the Committee') adopted its concluding observations ('Concluding Observations') on the second periodic report of Thailand submitted in line with article 40 of the International Covenant of Civil and Political Rights ('ICCPR'). Pursuant to its rules of procedure, the Committee requested Thailand to provide information on its implementation of the Committee's recommendations made in paragraphs 8, 22 and 34 of its Concluding Observations by 23 March 2018.<sup>1</sup> With respect to this, at the time of writing, the International Commission of Jurists (ICJ), Thai Lawyers for Human Rights (TLHR) and Cross Cultural Foundation (CrCF) understand that the Thai authorities are yet to file their follow-up report with the Committee.<sup>2</sup>
2. The ICJ, TLHR and CrCF welcome the opportunity to submit this joint follow-up submission on Thailand's implementation of the Committee's recommendations in paragraphs 8 (constitution and legal framework) and 22 (extrajudicial killings, enforced disappearances and torture).<sup>3</sup>

**Constitution and legal framework**

Orders by the Head of the National Council for Peace and Order

3. We remain concerned that, despite the Committee's recommendations,<sup>4</sup> no steps have been taken by Thailand to review all measures adopted under the interim Constitution of 2014 ('interim Constitution'), namely articles 44, 47 and 48, retained by the Constitution of the Kingdom of Thailand of 2017 ('2017 Constitution'), or measures adopted by the 2017 Constitution, which are inconsistent with Thailand's obligations under the ICCPR.
4. On 6 April 2017, His Majesty King Maha Vajiralongkorn signed into law the 2017 Constitution. Under article 265 of the 2017 Constitution, the Head of the National Council for Peace and Order ('NCPO') and the NCPO retain powers that the interim Constitution granted to them under articles 44, 47 and 48.<sup>5</sup> Furthermore, Article 279 of the 2017 Constitution reaffirms the constitutionality and legality of all existing and future Head of NCPO ('HNCPO') orders, NCPO orders, announcements

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<sup>1</sup> See, para. 46 of the Committee's Concluding Observations CCPR/C/THA/CO/2, 25 April 2017, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTHA%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTHA%2fCO%2f2&Lang=en).

<sup>2</sup> The organizations have been informed that, once submitted, Thailand's follow-up report will be posted online at

[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CCPR&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CCPR&Lang=en)

<sup>3</sup> 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, raising concern about, *inter alia*, the compliance of Thailand's constitutional and legal framework with the Covenant, and raising issues under the right to life and the prohibition of torture or other ill-treatment under the Covenant in connection with extrajudicial killings, enforced disappearances and torture in the country. That submission is available at [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT\\_CCPR\\_CSS\\_THA\\_26602\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_CSS_THA_26602_E.pdf).

<sup>4</sup> Para. 8 of Concluding Observations.

<sup>5</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).

and acts, and stipulates that they can only be repealed or amended by passage of legislation.<sup>6</sup>

5. As a result of certain HNCPO orders issued under article 44 of the interim Constitution, access to effective remedies for victims of human rights violations has been barred, despite the fact that article 25 of the 2017 Constitution recognizes the right to remedy for all persons "injured from the violation of [their] rights or liberties".<sup>7</sup>
6. Since the *coup d'état* of May 2014, at least 185 HNCPO orders have been issued under article 44 of the interim Constitution, of which at least 45 were issued after Thailand's review by the Committee in March 2017 ('Thailand's review').<sup>8</sup>
7. Certain HNCPO Orders, which impose severe restrictions on rights guaranteed under the ICCPR, have remained in force since Thailand's review. HNCPO Orders No. 3/2558, No. 5/2558 and No. 13/2559 grant military officers broad, unchecked powers to investigate, arrest and detain persons in places not formally recognized as places of detention for up to seven days, while HNCPO Order No. 3/2558 ('Order 3') also prohibits the gathering of five or more persons for political purposes. HNCPO Order No. 17/2558 allows for land acquisition for the development of Special Economic Zones ('SEZs') without the need to comply with safeguards provided under national environmental regulations.
8. Regarding the practice of prosecuting civilians before military courts, while it is being phased out through HNCPO Order No. 55/2559<sup>9</sup>, this Order only applies to alleged offences committed on or after 12 September 2016 and not retroactively to past or pending cases.<sup>10</sup> According to an officer from the Judge Advocate General's Office, as of 6 September 2017, there were 369 civilian cases pending before military courts nationally.
9. Rather than reviewing or striking down HNCPO orders in line with Thailand's obligations under the ICCPR, Thailand's courts have repeatedly upheld their validity. For example, on 30 October 2017, the Bangkok South Civil Court reportedly dismissed a lawsuit filed by 13 youth activists who had organized a peaceful gathering on 22 May 2015,<sup>11</sup> and which was reportedly suppressed with force by authorities.<sup>12</sup> In dismissing the case, the Court reportedly held that the right to peaceful assembly, guaranteed under the ICCPR<sup>13</sup> and the interim

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<sup>6</sup> ICJ and TLHR, 'Joint Submission of the ICJ and TLHR in Advance of the Examination of the Kingdom of Thailand's Second Periodic Report under Article 40 of the ICCPR', 6 February 2017, paras 3 to 22, <https://www.icj.org/wp-content/uploads/2017/02/Thailand-ICCPR-Submission-ICJ-TLHR-Advocacy-Non-legal-submissions-2017-ENG.pdf>.

<sup>7</sup> For example: On 15 May 2015, the Head of the NCPO issued HNCPO Order No. 17/2558, under article 44 of the interim Constitution to expedite the process of acquiring land for Special Economic Zones ('SEZs') by turning them into immovable property of the State and cancelling prior conditions of the land. In 2016, the Head of the NCPO used article 44 again to exempt construction in SEZs from domestic regulations. The use of article 44 barred communities affected by SEZs in Mae Sot from access to effective remedy and they had to use strategic litigation to challenge development projects in the SEZs.

<sup>8</sup> To date, two orders issued in 2018, 54 orders in 2017, 78 orders in 2016, 48 orders in 2015 and one order in 2014.

<sup>9</sup> Issued on 12 September 2016.

<sup>10</sup> ICJ, 'Thailand: ICJ welcomes Order phasing out prosecution of civilians in military courts but government must do much more', 12 September 2016, <https://www.icj.org/thailand-icj-welcomes-order-phasing-out-prosecution-of-civilians-in-military-courts-but-government-must-do-much-more/>

<sup>11</sup> The gathering was held to mark the first anniversary of the coup and to protest alleged rights violations by the police, armed forces and the Prime Minister's Office when the authorities reportedly used force to suppress the gathering.

<sup>12</sup> Prachatai English, 'Court dismisses activists' lawsuit against junta', (THAI) 30 October 2017, <https://prachatai.com/english/node/7443>

<sup>13</sup> Article 21 of the ICCPR.

Constitution, was restricted by Order 3.<sup>14</sup>The Appeal Court is now considering the case.

#### Escalation in use of Order 3<sup>15</sup> to restrict fundamental freedoms

10. Between 21 November 2017 and 7 February 2018, the NCPO filed complaints against individuals who merely exercised their fundamental freedoms in at least 11 cases against a total of 74 alleged offenders, approximately one person a day or one case a week.<sup>16</sup>
11. On 21 August 2017, five individuals were charged with violating Order 3 for participating in an academic conference in July 2017 at Chiang Mai University.<sup>17</sup> One of them, Dr. Chayan Vaddhanaphuti was reportedly charged under Order 3 for organizing the event, while the other four were allegedly charged for displaying banners that read: "This is not a military camp, but an academic forum". On 26 March 2018, the five defendants submitted a petition to the Attorney-General seeking a non-prosecution decision on the basis that prosecuting them would not be in the public interest. The Attorney-General has yet to make a decision.<sup>18</sup>
12. On 31 January 2018, it was reported that eight leaders of a march in support of environmental rights, better healthcare services and civil and political rights, also known as the 'We Walk' march, had been charged with violating Order 3, following a complaint by a military officer. They were allegedly charged for selling campaign t-shirts, persuading people to sign a petition seeking the revocation of NCPO orders, and for making a speech in front of Thammasat University.<sup>19</sup> Their case is now pending indictment by the public prosecutor.<sup>20</sup> This is against the backdrop of a Supreme Administrative Court ruling that the 'We Walk' march was compliant with the Public Assembly Act of 2015 ('Public Assembly Act').<sup>21</sup>
13. On 5 February 2018, 14 people in Payao province, including a minor with intellectual development disabilities, were reportedly charged with violating Order

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<sup>14</sup> Prachatai, 'Dismissed students' lawsuit asking for compensation from the crack down of the "Look at the Watch" gathering at the front of Bangkok Art & Cultural Center in 2015', (THAI) 30 October 2017, <https://prachatai.com/journal/2017/10/73874>.

<sup>15</sup> If convicted under HNCPO Order No. 3/2558, alleged offenders can be punished with imprisonment not exceeding six months, a fine not exceeding ten thousand Baht, or both.

<sup>16</sup> TLHR, 'NCPO Human Rights Agenda: Prosecuting Dissent Skyrockets', 9 February 2018, <http://www.tlhr2014.com/th/?p=6303>.

<sup>17</sup> Dr. Chayan Vaddhanaphuti, Pakawadee Veerapatpong, Chaipong Samnieng, Nontawat Machai and Thiramon Bua-ngam.

<sup>18</sup> TLHR, 'The 7<sup>th</sup> Postponement, Prosecutor still has no decision for "academic forum is not a military barrack case"', (THAI) 2 March 2018, <http://www.tlhr2014.com/th/?p=6438>.

<sup>19</sup> TLHR, 'NCPO Human Rights Agenda: Prosecuting Dissent Skyrockets', 9 February 2018, <http://www.tlhr2014.com/th/?p=6303>.

<sup>20</sup> The Nation, "'We Walk' case postponed because prosecutors not ready', 26 February 2018, <http://www.nationmultimedia.com/detail/national/30339717>.

<sup>21</sup> On 20 January 2018, Thai police reportedly stopped the 'We Walk' march from Bangkok to Khon Kaen province, on the basis that the march was in violation of HNCPO Order No. 3/2558. After a compromise was reached with the police, the activists were reportedly allowed to continue their march. On 22 January 2018, one of the organizers of the march lodged a complaint at the Central Administrative Court accusing the police of violating the Public Assembly Act. On 29 January 2018, the Central Administrative Court issued its judgment that the 'We Walk' march was compliant with domestic law. This decision however did not comment on the applicability of HNCPO Order No. 3/2558. On 15 February 2018, the Supreme Administrative Court upheld the lower court's ruling and dictated that the Royal Thai Police and regional police forces were required to facilitate and provide security for the march. For more information, see: The Nation, "'We Walk' rights march organizers sue police over alleged obstruction', 23 January 2018, <http://www.nationmultimedia.com/detail/national/30336894>; Bangkok Post, 'Top court protects 'We Walk' marchers', 15 February 2018, <https://www.bangkokpost.com/news/politics/1412726/supreme-court-protects-we-walk-marchers>; The Nation, "'We Walk' case postponed because prosecutors not ready', 26 February 2018, <http://www.nationmultimedia.com/detail/national/30339717>.

3 for organizing a short walk, and holding banners of solidarity with the “We Walk” march.<sup>22</sup> On 6 March 2018, they were informed that the police had decided not to prosecute them. However, their case is now pending indictment by the public prosecutor.<sup>23</sup>

14. On 8 February 2018, 39 activists, who had protested in Bangkok for national general elections to be held by November 2018, were reportedly charged for violations of Order 3 and article 7<sup>24</sup> of the Public Assembly Act.<sup>25</sup> Two of them pleaded guilty to all charges and, on 8 March 2018, were sentenced to a fine of THB 6,000 (USD 191) reduced to THB 3,000 (USD 96) and 12 days’ imprisonment, reduced to six days, suspended for a year.<sup>26</sup> Nine among the 39 activists were also charged under article 116 of Thailand’s Criminal Code, which criminalizes sedition-like offences.<sup>27</sup> On 10 March 2018, it was reported<sup>28</sup> that the Public Prosecutor had decided not to prosecute 24 of the 39 activists, on the grounds that prosecution was not in the public interest. A final decision by the Attorney-General in the case is currently awaited.<sup>29</sup>
15. On 14 February 2018, Colonel Burin Thongprapai, a NCPO official, reportedly filed a complaint against seven leaders of a protest and 43 protesters for staging a pro-election rally near Democracy Monument on 10 February 2018.<sup>30</sup> On 22 February 2018, the seven leaders were charged for violating article 116 of Thailand’s Criminal Code and Order 3.<sup>31</sup> On 8 and 14 March 2018, 42 protesters were charged for violating Order 3.<sup>32</sup>
16. On 21 March 2018, four student activists and two villagers who had participated in a pro-election rally in front of Chiang Mai University on 14 February 2018 were

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<sup>22</sup> The Nation, ‘Minor among villagers facing charges over 500-meter march in support of We Walk’, 7 February 2018, <http://www.nationmultimedia.com/detail/national/30338249>

<sup>23</sup> TLHR, ‘Police withdrew their request to temporary detain - and decided not to charge villagers of “We Walk Thewada Hill”’, (THAI) 7 March 2018, <http://www.tlhr2014.com/th/?p=6489>

<sup>24</sup> Article 7 prohibits public assembly within 150 meters of royal premises.

<sup>25</sup> Khaosod English, ‘Junta Orders Pro-Democracy Leaders Charged With Inciting Rebellion’, 30 January 2018, <http://www.khaosodenglish.com/politics/2018/01/30/junta-orders-pro-democracy-leaders-charged-inciting-rebellion/>; The Nation, ‘Junta slaps dozens with lawsuits to quell dissent’, 1 February 2018, <http://www.nationmultimedia.com/detail/politics/30337650>

<sup>26</sup> Suspension entails that if they do not commit the same alleged offence within a year, they will not be imprisoned.

<sup>27</sup> Prachatai, ‘Junta files more charges against pro-election MBK 39’, 7 February 2018, <https://prachatai.com/english/node/7618>; The Nation, ‘MBK 39 activists object to sedition charges over public speeches’, 8 February 2018, <http://www.nationmultimedia.com/detail/politics/30338305>; TLHR, ‘MBK 39 acknowledged the charges, both courts allowed them to be released’, (THAI) 8 February 2018, <http://www.tlhr2014.com/th/?p=6289>; TLHR, ‘Polices granted bail for MBK 39 for 100,000 THB each, Rome is still under the police custody and went to Khon Kaen for “Talk for Freedom Case”’, (THAI) 11 February 2018, <http://www.tlhr2014.com/th/?p=6336>

<sup>28</sup> Post Today, ‘Prosecutor has decided to drop the charge against 24 protestors who took part in “MBK39”, currently awaits for the final decision from the attorney general’, (THAI) 10 March 2018, <https://www.posttoday.com/politic/news/544016>

<sup>29</sup> The Public Prosecutor’s decision was made with reference to article 21 of the Public Prosecution Organ and Public Prosecutors Act of 2010, which states that “Should a public prosecutor find that a criminal prosecution will be of no public benefit, will affect national safety or security, or will impair significant interest of the State, he/she shall refer his/her opinion to the Attorney-General who may then render an order of non-prosecution.”

<sup>30</sup> Khaosod English, ‘Junta Files 50 Charges Over Election Protest’, 15 February 2018, <http://www.khaosodenglish.com/politics/2018/02/15/junta-files-50-charges-election-protest/>

<sup>31</sup> The Standard, ‘The court dismissed the request to temporary detain 4 leaders who led the protest at Democracy Monument on 10 February 2018’, (THAI) 22 February 2018, <https://thestandard.co/court-detained-mbk39/>

<sup>32</sup> One activist was not charged as the military reportedly withdrew its complaint in his case. For more information, see: TLHR, ‘Police Charged RDN 50 activists for violating Order 3/2558’, (THAI) 8 March 2018, <http://www.tlhr2014.com/th/?p=6500>.

charged for violating Order 3 after a military prosecutor filed complaints against them.<sup>33</sup>

17. On 15 and 19 March 2018, seven individuals were charged for violating Order 3 for conducting a pro-election rally at Pattaya province.<sup>34</sup>

### **Extrajudicial killings, enforced disappearances and torture**

18. The ICJ, TLHR and CrCF remain concerned that, despite the Committee's recommendations,<sup>35</sup> Thailand has continued to fail to ensure that its legislation fully criminalizes acts of torture, other ill-treatment and enforced disappearance. Furthermore, perpetrators of these crimes and of alleged extrajudicial killings have yet to be brought to justice. The Government has also failed to promptly, effectively, independently or impartially investigate allegations of torture, enforced disappearance and extrajudicial killings. In addition, whenever investigations into such crimes are conducted, relatives of the victims are not informed about the progress of such investigations. Moreover, persons working to report these crimes have been subjected to threats and reprisals.

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

19. Domestic legislation criminalizing torture, ill-treatment and enforced disappearance has not been enacted. During Thailand's review, the Thai delegation confirmed that the Draft Prevention and Suppression of Torture and Enforced Disappearance Act ('Draft Act') had been submitted to Thailand's legislative body, the National Legislative Assembly ('NLA'), which "had requested the Cabinet to further review the bill".<sup>36</sup> With no indication of a time frame for such review<sup>37</sup> or any legally stipulated time limit within which Cabinet has to review draft legislation, the NLA has effectively delayed the enactment into law of this Draft Act indefinitely.<sup>38</sup>

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<sup>33</sup> Prachatai, '6 pro-election protesters in Chiang Mai accused of violating junta's order', 21 February 2018, <https://prachatai.com/english/node/7636>; TLHR, 'People Calling for Election Acknowledged the Charge of Violating HNCPO Order', [THAI] 21 March 2018, <http://www.tlhr2014.com/th/?p=6590>

<sup>34</sup> TLHR, 'Pattaya police charged additional 4 people who participate in the protest calling for election', [Thai] 19/03/2018, <http://www.tlhr2014.com/th/?p=6547>

<sup>35</sup> Para 22 of Concluding Observations.

<sup>36</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.3350, 22 March 2017, para 5.

<sup>37</sup> See ICJ & TLHR, 'Joint submission to the UN Committee against Torture', 29 January 2018, paras 22-32, <https://www.icj.org/un-committee-against-torture-icj-and-tlhrs-joint-submission-on-thailand/>; 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>38</sup> 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 ('ill-treatment');  
(iii) the inadequacy of provisions establishing the inadmissibility of statements and other information obtained by torture, ill-treatment 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, ill-treatment and enforced disappearances." See ICJ and Amnesty International, 'Thailand: ICJ, Amnesty advise changes to proposed legislation on torture and enforced disappearances', 23 November 2017,



20. Following the Ministry of Justice's amendments to the Draft Act on 6 March 2018, the ICJ and Amnesty International sent an open letter to the Minister of Justice, on 12 March 2018, expressing concern that the amendments:
- a. removed a provision guaranteeing that the absolute prohibition of torture and enforced disappearance would not be suspended even during states of emergency;
  - b. removed a provision prohibiting arbitrary *refoulement*; and
  - c. removed the responsibility of commanders and other superiors whose subordinates commit acts of torture as a ground of criminal responsibility, and narrowed criminal responsibility for enforced disappearance to only superiors of subordinates who commit acts of enforced disappearance.<sup>39</sup>
21. The ICJ, TLHR and CrCF are deeply concerned about these recent amendments, because, if adopted as currently formulated, they entrench Thailand's failure to comply with its obligations under the ICCPR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED).
22. On 23 May 2017, pursuant to Prime Minister's Office Order No. 131/2560 ('Order 131 Committee'),<sup>40</sup> a committee chaired by the Minister of Justice and consisting of 18 officials drawn from different ministries,<sup>41</sup> including the Royal Thai Police, the Internal Operations Security Command (ISOC) and Department of Special Investigation (DSI) under the Ministry of Justice, was established to formulate policies for the prevention of acts of torture and enforced disappearance, and to investigate and provide remedies in accordance with the CAT and ICPPED.<sup>42</sup>
23. On 26 June 2017, the Order 131 Committee reportedly stated that it would consider past, pending and new cases of enforced disappearance, including 82 cases that had already been reported to the Working Group on Enforced or Involuntary Disappearances and the cases of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen.<sup>43</sup> On the same day, the Director-General of the Ministry of Justice's Rights and Liberties Protection Department also reportedly announced that the Department had received 37 cases involving allegations of torture, of which 12 had been settled.<sup>44</sup>
24. While the ICJ, TLHR and CrCF appreciate the Government's efforts to combat torture and enforced disappearance, the effectiveness of the Order 131 Committee in implementing Thailand's international human rights obligations has yet to be determined. It is not clear what legal framework - domestic and/or

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<https://www.icj.org/thailand-icj-amnesty-advise-changes-to-proposed-legislation-on-torture-and-enforced-disappearances/>

<sup>39</sup> ICJ and Amnesty International, 'Amendments to the Draft Prevention and Suppression of Torture and Enforced Disappearance Act', 12 March 2018, <https://www.icj.org/wp-content/uploads/2018/03/Thailand-Amendments-to-Prevention-and-Suppression-of-Torture-2018-ENG.pdf>; and ICJ, 'Thailand: ICJ marks 14th year anniversary of the enforced disappearance of Somchai Neelapaijit', 13 March 2018, <https://www.icj.org/thailand-icj-marks-14th-year-anniversary-of-the-enforced-disappearance-of-somchai-neelapaijit/>

<sup>40</sup> 'Committee managing complaints for torture and enforced disappearance cases'

<sup>41</sup> Office of the Attorney-General, the National Human Rights Commission of Thailand, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Defence, Ministry of Interior and Ministry of Health, the Office of the Attorney-General, and the National Human Rights Commission of Thailand.

<sup>42</sup> The Order 131 Committee created three sub-committees to deal with: (i) monitoring and investigating, chaired by the DSI; (ii) the provision of remedies, chaired by the Ministry of Justice's Rights and Liberties Protection Department; and (iii) prevention, chaired by a law professor from Thammasat University.

<sup>43</sup> Komchadluek, 'Thailand did not neglect 82 cases on Enforced disappearance', (THAI) 26 June 2017, <http://www.komchadluek.net/news/regional/284642>

<sup>44</sup> Ibid.

international - will ground its operations without a law in place that criminalizes torture, other ill-treatment and enforced disappearance.<sup>45</sup> Furthermore, its remit does not appear to include the protection of complainants and witnesses from retaliation or reprisals. The three organizations are also concerned that most members of the Order 131 Committee are not employed by independent civilian bodies, and that its establishment may be used to detract from efforts to enact legislation criminalizing torture, other ill-treatment and enforced disappearance.<sup>46</sup>

25. Further, a member of Somchai Neelapaijit's family informed the ICJ that, to date, apart from receiving a letter requesting the family to submit new evidence to the DSI, authorities have not informed the family about any progress in the case. Similarly, Billy's wife, Phinnapha Phrueksaphan, informed the ICJ that neither she, nor Billy's mother, had been informed by authorities about any progress in the case.
26. The ICJ, TLHR and CrCF are also concerned that there has been no public report on the progress of investigations that now fall under the remit of the Order 131 Committee.

#### Incommunicado detention

27. The three organizations are concerned that, despite the Committee's recommendations,<sup>47</sup> no amendments have been made to the Martial Law Act, Emergency Decree or Order 3. As a result, people continue to be detained incommunicado under these laws.
28. On 29 April 2017, military officers, invoking arrest and search powers under Order 3, arrested Prawet Prapanukul, a human rights lawyer; they also seized his electronic devices. Prawet Prapanukul's whereabouts were reportedly unknown until the afternoon of 3 May 2017, when he told lawyers that he had been held at the Nakhon Chaisri temporary remand facility,<sup>48</sup> inside the 11<sup>th</sup> Army Circle Military Base in Bangkok.<sup>49</sup>
29. On 24 October 2017, Ekkachai Hongkangwan, a pro-democracy activist, informed lawyers that after he had written online that he would dress in red and do something "unexpected" on the day of His Majesty King Bhumibol's cremation, military officials turned up at his residence in Bangkok, and allegedly told him to choose between spending a few days at what they described as a resort in Kanchanaburi province or a military base at an unspecified location. Ekkachai

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<sup>45</sup> ICJ, Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), TLHR and CrCF, '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>

<sup>46</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>47</sup> Para 22(d) of the Concluding Observations.

<sup>48</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/wpcontent/uploads/2015/11/Thailand-Detention-Advocacy-OpenLetter-2015-ENG.pdf>

<sup>49</sup> He was thereafter charged with ten counts of the highly restrictive crime of *lese majeste* under article 112 and three counts of sedition-like offences under article 116 of the Thai Criminal Code and violation of article 14(3) of the Computer Crime Act. For more information, See: ICJ, 'Thailand: immediately end the practice of arbitrarily detaining persons in unofficial places of detention', 4 May 2017, <https://www.icj.org/thailand-immediately-end-the-practice-of-arbitrarily-detaining-persons-in-unofficial-places-of-detention/>; TLHR, 'Not Request for Lawyer, Will not Provide Testimony, Not accept Court's Jurisdiction: Lawyer Prawet on his 112 Case', 18 September 2017, <http://www.tlhr2014.com/th/?p=5191>



Hongkangwan reportedly chose Kanchanaburi where he was held incommunicado. He reportedly returned home on 28 October 2017.<sup>50</sup>

### Southern Border Provinces<sup>51</sup>

30. The ICJ, TLHR and CrCF are concerned that, despite the Committee's recommendations,<sup>52</sup> reports of torture, ill-treatment and extrajudicial killings continue to emerge from the southern border provinces ('SBP'), and investigations into these allegations, and provision of reparations, remain slow.
31. Regarding reports of torture and other ill-treatment, the Muslim Attorney Centre (MAC) informed the ICJ that they received 27 allegations of torture in 2016, 54 allegations in 2017 and 16 allegations in 2018.<sup>53</sup> In 2017, CrCF, Duay Jai Foundation ('Duay Jai') and Patani Human Rights Organization (HAP) documented 30 alleged cases of torture and other ill-treatment, including 15 arising from allegations made in 2017.
32. Regarding reports of extrajudicial killings, between 2004 and 2017, Duay Jai documented 219 cases of extrajudicial killings in the SBP, of which 10 were documented in 2017.<sup>54</sup> MAC also documented 12 allegations of extrajudicial killings in 2017 in Yala province alone.<sup>55</sup>
33. In most cases of torture, other ill-treatment and extrajudicial killings, including cases where victims and/or their families have received reparations in the form of monetary compensation, perpetrators have not been brought to justice.
34. CrCF recorded that four alleged survivors of torture and other ill-treatment in the SBP received cash compensation following orders by the Supreme Administrative Court; however, the cases took approximately six to eight years to conclude and no one has been brought to justice for the crimes underlying those allegations.<sup>56</sup> Similarly, on 28 December 2017, Pattani Provincial Court ordered the Royal Thai Army and the Prime Minister's Office to pay a total of THB 7,176,500 (USD 228,930) in compensation to five villagers who had been shot and injured by rangers on their way to a funeral in 2012.<sup>57</sup> Four people were killed in the shooting and, while family members of the victims were compensated, no one has been charged for the deaths or injuries caused.<sup>58</sup>
35. On 12 October 2017, the Southern Border Provinces Development Strategic Committee ('SBP Committee') passed a resolution to provide compensation in the sum of THB 1 million (USD 31,900) approximately to each family of 17 victims

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<sup>50</sup> TLHR, 'Statement Demanding the immediate release of Ekkachai Hongkangwan from unlawful custody', 25 October 2017, <http://www.tlhr2014.com/th/?p=5551>

<sup>51</sup> Thailand's southern border provinces of Pattani, Yala, Narathiwat and 4 districts of Songkhla (Tepa, Sabayoi, Nathawi and Jana) are predominantly populated by ethnically Malay Muslims; the simmering resistance against incorporation into Thailand erupted into an armed insurgency in 2004, killing more than 6,000 people since then.

<sup>52</sup> Para 22 (a) of the Concluding Observations.

<sup>53</sup> As of 12 March 2018.

<sup>54</sup> Duay Jai Foundation, 'Monitoring and Fact Finding Situation in Deep South Thailand Report 2016 - 2017', p23.

<sup>55</sup> As of 12 March 2018.

<sup>56</sup> Interviews on 10 March 2018 with CrCF lawyers who provided legal assistance to the villagers in their civil suit.

<sup>57</sup> Ibid.

<sup>58</sup> See also, CrCF, 'Pattani Court ordered 4 deaths in Pulohpuyoh were a result of the security forces' operations', (THAI) 1 August 2013, <https://voicefromthais.wordpress.com/2013/08/01/%E0%B8%A8%E0%B8%B2%E0%B8%A5%E0%B8%9B%E0%B8%B1%E0%B8%95%E0%B8%95%E0%B8%B2%E0%B8%99%E0%B8%B5%E0%B8%A1%E0%B8%B5%E0%B8%84%E0%B8%B3%E0%B8%AA%E0%B8%B1%E0%B9%88%E0%B8%87-4-%E0%B8%A8%E0%B8%9E-%E0%B8%9B/>

who had been killed as a result of security operations between 2005 to 2014,<sup>59</sup> including the family of Mahkohaeng Lasae, who was shot dead by a ranger in 2012. After a post-mortem inquest hearing, the Yala Provincial Court decided that the evidence was insufficient to find that Mahkohaeng had fought with the rangers, thus casting strong doubts on the credibility of the rangers' allegation that they had shot him in self-defence.<sup>60</sup> Other families compensated as a result of the SBP Committee's resolution included the families of Kohlid Mameng, Madari Maeroh, Saddam Wanu and Suhaimin Zen, who had all been shot dead by security forces in connection with their suspected involvement in insurgency efforts in 2015. After a post-mortem inquest hearing, the Pattani Provincial Court ruled that the men had been shot from behind, casting suspicion on the rangers' allegation that they had shot them in self-defence.<sup>61</sup> To date, no perpetrator has been brought to justice in any of the abovementioned cases.

36. The ICJ, TLHR and CrCF are also concerned about the treatment of detainees and their access to family members and lawyers in military facilities. In 2017, CrCF, Duay Jai and HAP conducted interviews with at least 50 family members of detainees and received information that military officers had reportedly used tactics to coerce confessions, such as informing detainees that they would be released within three days to a week, if they confess; that they would be detained without family visits if they did not cooperate; limiting family visits to a few minutes or shorter if detainees refused to cooperate; and preventing detainees and their families from speaking to one another during family visits. CrCF was also informed that detained persons were at times denied access to a lawyer, and that persons released after detention were at times rearrested under Martial Law, causing fear and distrust of security forces in the SBP amongst local populations.

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

37. Despite the Committee's recommendation that the Government ensure prompt, effective, independent and impartial investigations into allegations of torture, enforced disappearance and extrajudicial killings,<sup>62</sup> human rights defenders, victims and family members face judicial harassment, reprisals and threats for working to bring to light cases of alleged torture, other ill-treatment and enforced disappearance.<sup>63</sup>

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<sup>59</sup> Thairath, 'THB 21 Millions will be compensated to 17 individuals who were killed by authorities in the SBP', (THAI) 11 October 2017, <https://www.thairath.co.th/content/1095967>

<sup>60</sup> CrCF, '25 January - Yala Provincial Court scheduled an examination of the case of Mahkohaeng Lasae that was transferred from Songkhla Administrative Court', (THAI) 20 January 2017, <https://voicefromthais.wordpress.com/2017/01/20/25-%E0%B8%A1%E0%B8%84-25%E0%B8%A8%E0%B8%B2%E0%B8%A5%E0%B8%88%E0%B8%B1%E0%B8%87%E0%B8%AB%E0%B8%A7%E0%B8%B1%E0%B8%94%E0%B8%A2%E0%B8%B0%E0%B8%A5%E0%B8%B2%E0%B8%99%E0%B8%B1%E0%B8%94%E0%B8%9E%E0%B8%A3/>

<sup>61</sup> ThaiPBS, 'Pattani Provincial Court read its decision on the death of 4 individuals at Ban Toh Chood, Thung Yang Daeng District, the 4 were shot from behind during the security forces' operation', (THAI) 14 September 2016, <http://news.thaipbs.or.th/content/255772>

<sup>62</sup> Para 22 (a) of the Concluding Observations.

<sup>63</sup> See also para. 35 where this Committee stated, in reference to the Criminal Code, the Computer Crimes Act (2007), Order 3/2015 and the restrictions imposed through section 44 of the interim Constitution, that, "it is also concerned about criminal proceedings, especially criminal defamation charges, brought against human rights defenders, activists, journalists and other individuals under the above-mentioned legislation and about reports of the suppression of debate and campaigning, and criminal charges against individuals during the run-up to the Constitutional referendum in 2016 (arts. 19 and 25)." Notably, on 26 March 2018, Phra Kanong Provincial Court ruled that Andy Hall, a labour rights activist, had to pay 10 million Baht (approximately USD 321,000) in damages to Natural Fruit Company in a civil defamation case filed by the company after he released a report in 2013 that documented labour rights violations at Natural Fruit's facilities. Three other defamation suits were filed against Andy Hall; while he prevailed in one criminal defamation suit, one civil suit and one criminal suit remain pending.

38. On 14 February 2018, the Director of the ISOC Region 4 reportedly authorized Lieutenant Colonel Seathtasit Kaewkumuang to lodge defamation complaints against Isma-ae Tae, a founder of HAP. The accusations related to a TV program entitled "Policy by People" that aired on the Thai PBS channel on 5 February 2018 in which Isma-ae Tae described being tortured and ill-treated by soldiers in 2008. While no security officer has been brought to justice in this case, on 19 October 2016, the Supreme Administrative Court ordered the Royal Thai Army and the Defence Ministry to pay 305,000 Baht (USD 9,700) in compensation to Isma-ae Tae, after it had found that he had been "physically assaulted" during his illegal detention for nine days, exceeding the seven-day limit permitted under Martial Law Act.<sup>64</sup>
39. On 9 February 2018, the Director of the ISOC Region 4 reportedly authorized Colonel Hanphon Petmuang to lodge a complaint under article 328 of Thailand's Criminal Code and article 14(2) of the Computer Crime Act against the editor of the 'Manager Online' news website for defamation over a story the website published on 5 February 2018 on the alleged torture and ill-treatment of a suspect in military camps. The military also sought 10 million Baht (USD 320,000) in damages from the news website.<sup>65</sup>
40. On 22 November 2017, Anuphong Phanthachayangkun, a former Sub-district Head in the SBP province of Narathiwat, was sentenced to one year's imprisonment after the Supreme Court upheld a lower court guilty verdict. In 2011, the police filed a criminal complaint against him claiming he had made a false complaint of torture and ill-treatment against a police investigation team, after he claimed he had been tortured into confessing to his involvement in a 2004 armed robbery case at Narathiwat Rajanagarindra Army Base and to the murder of a police officer. Anuphong Phanthachayangkun had filed his complaint against 20 investigation officers after he had been acquitted by the Appeal Court of both charges.<sup>66</sup>
41. On 1 July 2017, Anchana Heemmina, co-founder of Duay Jai, was reportedly visited at her family shop by plain-clothed men believed to be military personnel who warned her against posting comments about human rights violations on social media.<sup>67</sup>

## Recommendations

42. 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.
43. The three organizations further recommend that the Order 131 Committee: (i) establish a clear legal framework upon which it will operate to investigate cases of torture, other ill-treatment and enforced disappearance; (ii) guarantee legal and operational independence in investigating alleged cases of torture, other ill-treatment and enforced disappearance; and (iii) establish mechanisms to protect

<sup>64</sup> ICJ, 'Thailand: immediately stop criminal defamation complaint against torture victim', 15 February 2018, <https://www.icj.org/thailand-immediately-stop-criminal-defamation-complaint-against-torture-victim/>

<sup>65</sup> Ibid; The Nation, 'Army under fire for defamation lawsuits against media, rights group over torture', 19 February 2018, <http://www.nationmultimedia.com/detail/national/30339163>

<sup>66</sup> Prachatai, 'Ex-kamnan from Deep South jailed for accusing police of torture', 24 November 2017, <https://prachatai.com/english/node/7485>

<sup>67</sup> Communications issued on Thailand, 13 September 2017, 'Mandates of the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Working Group on the issue of discrimination against women in law and in practice', AL/THA 6/2017

the rights of victims' families and other individuals who have suffered harm as the result of torture, other ill-treatment and enforced disappearance.

44. The ICJ, TLHR and CrCF also recommend that Thailand set up protection mechanisms for human rights defenders, victims and family members who face judicial harassment, reprisals and threats for working to bring to light cases of alleged torture, other ill-treatment and enforced disappearance, and ensure that perpetrators of such harassment and reprisals are prosecuted and, if convicted, punished with appropriate sanctions.