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Human Rights Situation Report

: One month after the 2014 coup

Introduction to the Thai Lawyers for Human Rights

The Thai Lawyers for Human Rights is a group of human rights attorneys and lawyers and social activists which provides legal aid to people affected the enforcement of law by the National Council for Peace and Order (NCPO).

From our monitoring and information gathering in the past one month after the coup, we have identified issues that affect core human rights as follows;

NCPO Notification/Directive

Since the NCPO has staged the coup (until 20 June), 70 Notifications or Directives have been issued which infringe on people's rights and liberties including;

1. NCPO Notification no. 2/2557 to impose Martial Law throughout the Kingdom
2. NCPO Notification no. 7/2557 to ban a gathering of five people and upwards and to inflict imprisonment of no more than one year and a fine not exceeding 20,000 baht or both for violation of such command
3. A number of NCPO announcements have been made to summon individuals to 'report themselves'
4. The NCPO Notifications which affect press freedom include no. 12/2557 regarding the seeking of cooperation from social media, no. 14/2557 regarding the prohibition of any causes of conflict and resistance to the operations of the National Council for Peace and Order, no. 15/2557 regarding a ban of broadcasting of satellite/cable TV, digital TV, and community radio, no. 17/2557 regarding internet broadcasting, no. 18/2557 regarding public information dissemination, no. 23/2557 regarding radio broadcasting, no.27/2557 regarding broadcasting of territorial and digital TV and TV licensees with concessions obtained from governmental offices, state enterprises and state agencies, no. 32/2557 regarding a ban of broadcasting of unlicensed community radio
5. NCPO Notification no. 37/2557 regarding the jurisdiction of the military court over certain criminal offences

The summonses and arrests made after the coup

According to our information (as of 20 June), NCPO has called in publicly at least 454 individuals, and at least 57 have been informally summoned in the province.

In addition to the detention those reporting themselves to the authorities as required, at least 178 individuals have been arrested including (1) 113 arrestees whose names have not been announced prior to

their arrest, (2) 55 individuals apprehended during their public demonstrations and (3) ten individuals arrested for failing to report themselves as requested.

According to the information of confirmed cases of 214 individuals who have been detained and then discharged, 25 of them were detained and then discharged within one day, 18 detained for two days, 35 detained for three days, 28 detained for four days, 19 detained for five days, 28 detained for six days, 53 detained for seven days, and one detained for eight days. Among them, at least 55 have also been pressed with criminal charges after being discharged. There is at least one individual being detained longer than seven days.

1. Summonses

Those who have been summoned include a variety of people such as politicians, core leaders of the protests, business persons, academics, social activists and others.

Upon their self-reporting, they were instantly denied the chance to contact other people. Some were released on the same day while others have been transferred to various facilities. Though they can be accompanied by their confidantes during the transfer, but at the detention facilities, the confidantes were kept in a separate room. While being in custody, they were not allowed to contact other people, if they were allowed to do so, it would be done with the presences of the military. If it was decided that the persons who were summoned were to be moved to another detention facility, the persons who accompanied them shall not be informed of the whereabouts. They would be simply informed that the persons had been moved away and were no longer able to contact the persons summoned to report themselves.

As for treatment during the apprehension, after reporting themselves, some of them found themselves being blindfolded or hooded with plastic bags to prevent them from knowing where they were taken to. Also, they were driven round and round making them confused as to where they were. The detention facilities were arranged in military barracks. They were hosted in the military guesthouses and were allowed to contact their relatives with the presence of the military officers. In certain faculties inside military compound, the detention rooms were adjusted to block any view outside and some were locked from outside as well.

During the detention, an interrogation was carried out by the officials with an aim to “exchange opinions” with them or to “tame their opinions”. Inquiries were made as for their personal information and information concerning other people assumed to be related to the detainees. The questions were developed based on the prearranged files. Some detainees were asked to identify people from photos as they were presumed to know them. They were asked about their sources of funding, political activism, political opinions, etc. After the interrogation was done, the detainees had to promise to not get involved with any political activism and to not go abroad.

Regarding the release, we have found some were brought to train stations or their residences at night time. Some have not been released since they were pressed with other criminal charges including offences against Article 112 of the Penal Code (lèse majesté law) and were denied bails.

In the province, the summoning of individuals has never been formally and publicly made. They were simply called up by phone and asked to report themselves (including social activists and academics in the provinces of Chiang Mai, Ubon Ratchathani, Khon Kaen), and some were visited by officers at different places where they were found.

2. The arrest and detention

Essentially, (1) the detention of those exercising the right to freedom of expression including people flashing three fingers in various places, posting pictures on facebook or holding signs to oppose the coup. (2) the arrest or apprehension of those gathered to protest against the coup, even though the person was there by himself and had not made appointment with others, or did not even gather more than five people upwards (it was noted that certain protesters had been arrested, not simply because of their symbolic expression, but their prior involvement which had made them a target of arrest, otherwise they must have potentially committed an offence against Article 112 or that they were well known red shirt activists), and (3) the detention of those who have failed to report themselves as requested for by the NCPO.

Treatment during the apprehension

The apprehension has evolved over the time as follows. Initially, the those coming out against the coup were subject to apprehension right on the spot where they were demonstrating. Later, the authorities simply took their photos while demonstrating and raided and arrested them afterward. Some were apprehended while leaving for home from the protest site, or while they were doing their daily chores. The apprehension was carried out invoking Martial Law with no warrants issued. Some were apprehended without being informed of the charges or the underlying reasons. Some were apprehended in the province and taken on helicopter to Bangkok or elsewhere. The rest were informed of the charges during the apprehension and then detained at police stations. As for those who have been summoned, but failed to report themselves, they would be apprehended right on spot where they were found. Then, they might be released or brought to the military court.

Treatment during the police custody at the Crime Suppression Division and police stations

The detention applied differently to different people. Initially, after the coup, those apprehended were not taken into the cells, but later they were taken in there right away without being informed of the charges. Some of those apprehended for failing to act in compliance with the orders of NCPO have been released without being charged, while others were charged depending on how the arrestees behaved and how they expressed themselves and if they showed any sign of yielding to the demand of the officials including to comply with the military command. But if the persons failed to show any complying gestures or if they happened to be core leaders of the anti-coup protest, they shall be threatened with legal actions based on the prior intelligence the officials had obtained or any other information they acquired from the arrestees' facebook or e-mail, as while being held in custody, the arrestees were forced to given the officials their passwords.

As for the treatment during detention, the arrestees under Martial Law were held in custody in non-prison facilities. Later on, most arrestees were put right away into police station cells or prison. Nevertheless, several arrestees have been held in custody in unannounced facilities. For those held in custody in non-prison facilities, several were put into the military guesthouses, while others were forced to stay in cells and being deprived of sufficient drinking water and sleeping space. Some were detained in dark rooms for a while. Some were detained in military prisons and deprived of sufficient sleeping space and toilet. Some were put into solitary confinement. The officials would threaten that some of them would be put into solitary confinement or dark cells, if they did not behave. During the detention invoking Martial Law, the detainees are deprived of their right to legal counsel and were not informed of the whereabouts of their detention. They were not allowed to contact their relatives and held in incommunicado detention and barred from either reading newspapers or watching TV. Their attorneys had to approach the officials to ask for leniency or to get them to contact their families. Regarding medical treatment, though the relatives were allowed to bring medicine to the detainees, the detainees were not allowed to see doctor. If their ailments became serious, then they would be transferred to hospital. As for those subject to physical abuse, they would be given initial treatment. It should be noted though that the treatment was meant to tamper with evidence of the physical abuse.

Interrogation Those arrested were either processed according to the Criminal Procedure Code, i.e., being pressed with charges and given the right to legal counsel, and those arrested invoking Martial Law without being informed of the charges. No presence of attorney was allowed during the interrogation, but the presence of a number of military and police officials as observers during the interrogation. The arrestees or detainees then were asked about their political opinions and were convinced by some military officials of the necessities of the coup. They were told the coup was the right action and then the detainees were asked to communicate to both the military and general public that they then have already agreed with the coup as a precondition prior to their discharge. During the detention, their communication devices including mobile phones would be seized by the officials for inspection. And if any information obtained from their devices was related to any offences (particularly against Article 112), or was found to violate the NCPO Notifications, they could face prosecutions later.

Release If no charges were pressed against the detainees, they would be released at the police stations within three, five or seven days after being arrested. Nevertheless, it appeared that the officials were confused with how to count the day of detention and as a result, some have been subject to longer seven days of detention and a few continue to be detained even now. Upon their discharge, the detainees had to sign a contract agreeing to the terms set out by the military including by refraining from any political activism or expressing any political opinions.

Prosecution According to the present information, common charges pressed against the detainees include violation against a ban of political gathering, being assembled for an intention to cause public disorder, being leaders of the protest, violation of Penal Code's Article 215 for failing to disperse when ordered to do so, Article 216 and Article 116 for inciting violence if the persons happened to have persuaded others to participate in the protest. Those who have failed to report themselves would find themselves violate

the official order and would be vulnerable to be charged with severe offence including the violation of Article 112. The detainees' fingerprints were obtained to enable the officials to look up their criminal records.

Military court Based on existing precedents, those found violating the command of NCPO after 25 May 2557, either issued with a warrant or not, shall be brought to the military court; some were brought to the court even though they had not been detained for seven days. If the Court granted them bails, they would still be brought inside the prison to the sleeping area first prior their temporary release.

Civilian court Based on existing precedents, those found violating the command of NCPO after 25 May 2557, either issued with a warrant or not, shall be tried at the civilian court. In such cases, the arrestees or detainees shall be entitled to their rights according to normal justice process.

Implications after the release Given that the detainees had been forced to give passwords for their e-mail or facebook accounts, or their phone numbers, after the discharge, they still have no right to their privacy and it affects their daily life as well. For example, when their colleagues know that the arrestees or those reporting themselves share different opinions from theirs, it might have given rise to conflicts in workplaces. Also, after the discharge, they might find their right to freedom of expression compromised, either to express themselves via social media, or to participate in any demonstrations. They are barred from traveling outside the country without permission. Should they fail to act according to the terms and conditions they have conceded to by signing the agreements prior to the discharge, the authorities retain the right to freeze their assets.

Searches It was found that there were instances whereby the military simply raided and taken away individuals from their residences without any warrant or made an attempt to search the houses. After the searches, it might lead to prosecution against the persons. As a result, people feel concerned about the exercise of the power by the military which seems to exceed what is provided for by law.

Bails Based on existing precedents, only one person has been granted temporary release at the police station. But those charged at the Crime Suppression Division, none of them have been granted bails. At the military court, some were bailed out, though the process took longer time than in normal courts. The deposit ranges from 10,000 – 40,000 baht, and maximum at 400,000 baht. The military court has denied bail for some persons though, i.e., those charged for having in possession war weapons, or violation of Article 112 citing the fear that the alleged offenders would flee. None of those charged for violating Article 112 have been granted bail, so far. As for applying bail with civilian courts, if the persons were charged for violating the order to ban political gathering, or other laws, they shall be entitled to bails. But none of those charged for violating Article 112 have been granted bails so far.

Impacts on general public

The general public apparently feels concerned about the imposition of Martial Law, particularly its impacts on the right to freedom of expression, any symbolic actions against the coup. They become nervous when military officials came to their neighborhoods, particularly if they are themselves red shirt supporters or

if they have relatives who are the red supporters. Also, they feel concerned when their friends or relatives are summoned by the military. When any incidence happens, it is often attributed to the measures carried out by the military.

Impacts on media

Since the imposition of Martial Law, control and censorship have been placed upon the broadcasting of free TV and satellite TV and community radio. Access to a number of websites, inside and outside the country, has been blocked. Some publications have been removed from bookshops. And self-censorship has been employed by broadcast media, the press, online media and even bookshops.

Legal opinions toward the current situation

1. The imposition of Martial Law countrywide

The National Council for Peace and Order (NCPO) has issued the Notification no. 2/2557 to impose Martial Law throughout the Kingdom for maintaining public order.

Since measures invoking Martial Law bestow draconian power on the authorities to curb rights and freedom of the people, the power has to be exercised considerably. Until now, there have been no violent incidences which would have required the imposition of Martial Law. It is not necessary to continue to apply Martial Law and it should be replaced with normal laws which are capable of holding people responsible for their crime.

2. Control and censorship of all media

Amidst the large scale social transformation and the initiation and implementation of a number of public policies which may affect the life of normal people, press freedom to disseminate information and opinions from all sides is utmost important to ensure that people are informed of the benefits or impacts that might affect their livelihood.

Press freedom is pivotally important in a democracy as media are supposed to monitor the operation of the state and to report truthful information to public. Media here also include social media, publications and other opinions expressed by academics.

By banning or censoring broadcasting of TV and radio, by prohibiting TV programs from hosting academics to share their opinions, and by removing academic publications selling as well as by blocking access to websites and controlling social media, it has led to a huge compromise for public as for options to receive information. As a result, their decisions could not be made based on informed consent. It is therefore very appropriate that all Notifications to censor and control media be revoked.

3. The detention and prosecution against peaceful demonstrators who have expressed their opinions or criticisms faithfully

The right to peaceful assembly and freedom of expression is very important and indispensable in a democracy. The right to express diverse opinions is a precondition to solving problems or conflicts in society. Therefore, the prohibition of political gathering and the deprivation of the right to freedom of expression and peaceful assembly, the detention and prosecution against those dissenting against the National Council for Peace and Order (NCPO) are tantamount to a serious violation of rights and liberties and such prohibitions must be halted.

4. The summonses and the imposition of conditions prior to the discharge

Since seizing the power, the NCPO has issued orders to summon more than 500 individuals to report themselves. The act is an arbitrary violation against personal rights since so far no clear guidelines as to the exercise of power by the military including the summonses have been laid down and no reasons have been given as to why a person is summoned. Moreover, criminal penalties have been unjustly imposed on persons who have failed to report themselves.

In addition, that a person is required to agree to conditions set out to curb their rights and freedom prior to their discharge is an unfair treatment against them.

5. The arrest and detention of persons

The arrest and detention of a person is a grave infringement on their right to life and body. The state shall resort to exercising such measures that infringe on people's rights and liberties only as necessary. Arbitrary arrests without any clear guidelines and solid reasons and detentions of a person simply because of their peaceful and symbolic actions and the detention inflicted on those who have reported themselves are therefore a serious and unnecessary violation people's rights and liberties.

In addition, regarding the arrest and detention invoking Martial Law, there have been no consistent guidelines applied. A person can be arrested without their relatives being informed of the place of detention, and any visits are not allowed while the person is held in military custody. Upon the completion of interrogation, the person is not released right away and no record of the arrest and release is made as required by Martial Law. Also, the detainees are treated inappropriately including being blindfolded during the detention. Ms. Kritsuda Khunasen, for example, has been detained for more than seven days, the act of which is not permitted according to Martial Law and so far, her relatives have not been informed of her whereabouts and wellbeing. Such protracted loss of contact and all other ill treatments are not consistent with human rights standards.

6. Prosecution against civilians in military court according to the Notification regarding jurisdiction of the military court

The separation of powers including the administrative, legislative and judiciary powers is a guarantee for checks and balances and disallows the absolute dominance of any single power. The prosecution against civilians in the military court, particularly in the situation whereby the military has seized the power and has exercised the laws regarding their jurisdiction of the military court, is obviously a breach of the separation of powers principle and thereby compromises checks and balances. It is an infringement of the rule of law since no independent and impartial judiciaries are available (military court judges are appointed by Minister of Defense or military commanders and they are not charged with the duties to hear cases against civilians who have been accused of committing certain criminal offences and violating the Notifications or Directives of NCPO, thus the military court judges cannot be independent considering how they are recruited and the performance of their duties.) Their verdicts are not subject to public scrutiny and no appeals are allowed. Therefore, civilians should be not tried by the military court in whatsoever circumstances.

Recommendations by the Thai Lawyers for Human Rights

1. Revoke the imposition of Martial Law and rescind any Notifications issued invoking Martial Law countrywide since the necessities that require the invocation of Martial Law no longer exist and replace it with normal justice process.

2. Revoke any measures to censor and control media

3. Stop the detention invoking Martial Law and stop the prosecution against peaceful demonstrators who have expressed themselves or made criticisms faithfully and revoke any order to ban public assembly

4. Stop the summonses

5. As for people being held in custody, no preconditions shall be imposed upon their discharge. Any arrest and detention shall be used when they are necessary. In addition, clear guidelines on the arrest and detention should be issued in compliance with human rights principles. For example, the person arrested and held in custody should be informed of the reasons for the arrest, the whereabouts of the detention, be able to contact their relatives and have their visits since as early as when they are first apprehended and deprived of their liberty, etc.

6. Stop trying a civilian in military court by invoking the Notification regarding the jurisdiction of military court over certain criminal offences.

7. Those accused of violating the Notifications or Directives by the National Council for Peace and Order (NCPO) and prosecuted according to the Penal Code on offences related to national security should be treated as political prisoners and shall be held in custody separate from other offenders.
