

Collapsed Rule of Law:

The Consequences of Four Years
under the National Council
for Peace and Order
for Human Rights
and Thai Society



TLHR

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Second only to the military rule under Field Marshal Sarit Thanarat and Field Marshal Thanom Kittikachorn (1958 - 1973), the National Council for Peace and Order (NCPO) is the longest running military government in the history of Thailand, following the fourth coup d'état anniversary on 22 May 2018.

Since its seizure of power on 22 May 2014, the NCPO has spent four years in office, the same amount of time that an elected government would. Generally, a civilian government ends its term and a general election is subsequently held by the end of its fourth year. The NCPO, however, has failed to step down.

Over the course of four years, the junta's administration has wrecked Thai society, especially in its missed opportunities for democratic development and the rule of law. Several reports of international organizations indicate that the human rights situation in Thailand has deteriorated.¹ The military government has set out to establish its own version of political order and to do so through legislation that will continue to have consequences for Thai society long after the junta itself has withdrawn from office.

During the junta's fourth year, Thai Lawyers for Human Rights (TLHR) has continued to monitor and document the human rights situation in Thailand, and provide legal assistance to individuals persecuted for their exercise of freedom of expression relating to the coup. In total, TLHR has represented 303 persons in 151 cases.

This report is based on the information collected from work on those cases and from monitoring and documentation. It aims to examine the crucial political and legal characteristics of the NCPO, including its anticipated effects on any new elected government.² Additionally, this report presents pathways to solutions of these political and legal effects.

The report contains three parts: the political and legal characteristics of the NCPO, human rights violations in the course of four years under military rule, and recommendations on pathways towards solutions to the consequences of these years of dictatorship. 

1 For example, Freedom House has rated Thailand as Not Free for four consecutive years in its annual Freedom in the World reports. Prior to the coup, Thailand was rated as Partly Free (See <https://freedomhouse.org/report/freedom-world/2018/thailand>); Reporters Without Borders (RSF) rates Thailand between 134 - 142 from 180 countries in its annual World Press Freedom Indexes from 2015 to 2018 (See <https://rsf.org/en/thailand>); and Foundation for the Advancement of Liberty (Fundalib) rates Thailand 196 out of 198 countries in its World Electoral Freedom Index (See <http://www.fundalib.org/en/blog/>)

2 See Article 265 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017)

What has the NCPO established in Thai political and legal systems?

The crucial characteristics of the NCPO's orders and system to maintain power that will remain in Thai society after the junta's withdrawal from office are threefold: militarization of civil management and control, constitutionalization of absolutism, and use of law to deny individual rights and freedoms.

1. Militarization of civil management and control

Thailand has become "military barracks"

A significant aspect of the 2014 coup is not only the seizure

of government power and the increase of the military's role in Thai politics, but also a steady process of militarization of administration in many dimensions.

Militarization³ refers to a gradual process whereby a society or members of a society become subject to military control or military thinking. Under this process, military necessity is normalized and it prompts a change in societal beliefs and values, legitimizing the use of force and a more oppressive use of power.

By seizing power and inserting itself in politics, the military utilizes military values and national security rationality to extend its influences over the mindset and administration of actors ranging from civil servants to social units—urging them to operate under a military mindset and yield to arbitrary use of power.

Civilians have become military "targets"

The 2014 coup incorporated a military way of thinking in dealing

3 See Pitch Pongsawat (28 November 2017) "ยุทธภวิวัฒน์ (militarization)" <https://www.matichon.co.th/news/744952> and Madelaine Adelman (2003) "The Military, Militarism, and the Militarization of Domestic Violence," in *Violence Against Women* Vol. 9 (9), September 2003: pp.1118-1152.

with political conflicts⁴ whereby the army is ostensibly an “intermediary” who only seized power to resolve political deadlocks and maintain societal peace and order. The military has positioned itself so that this way of thinking is central to the legitimization of the coup and to its role countering “internal threats”, in addition to managing reconciliation, political conflict resolution, and social structure organization, among other things.

Following its mindset of peace and order maintenance, the NCPO has made peaceful assembly and political expression illegal, prohibiting the exercise of rights and liberties of the people that would otherwise have enjoyed under a civilian regime. Under the junta these activities amount to “national security” matters. Expressing opinions and criticisms together with political gatherings are deemed “disorder and chaos” or “sedition and incitement”. Authorities often cite that organizing activities in political matters affects national security, and force or request the organizers for cooperation in ceasing whatever they are doing. This practice of intervention into any matters deemed illegal has been normalized under the NCPO.

By treating political expression as affecting “national security”, security

agencies can seize control of and manage political conflicts. To this end, apart from existing bodies, the NCPO has set up the Peace and Order Maintenance Command (POMC). The command operates under regional army units and seats the Commander-in-Chief as its commander, while regional and division commanders supervise regional POMC units. The POMC thereby works as an operation-level governmental unit under direct command of the NCPO, which has full control of the unit’s policy.⁵

Consequently, the POMC has been transformed into a force that exercises government authority under the NCPO command in its mission to monitor public events; observe and summon individuals for talks; press charges against those expressing political opinions; make lists of individual profiles; impel the reconciliation process; and coordinate with regional government agencies in order to maintain peace and order in addition to install public respect for the NCPO-defined law.

To control political order, military personnel class individuals into “target groups” and assign each the status of “target” in military operations.⁶ Individuals whom military officials summon or follow or list have experienced military personnel

4 In the context of Thai society, the extension process of military thinking and operations occurred during the Cold War era. The Thai government and the coup d’état bodies since Field Marshal Sarit Thanarat’s rule long utilized such ways of thinking to counter communist “threats”. Upon the end of the Cold War and the establishment of parliamentary democracy, the mindset subsided until the NCPO took power and reinstated it in many aspects, in a forceful and systematic manner.

5 See the Announcement of the NCPO No. 22/2014 on the Organization and Assignment of Duties and Responsibilities of the NCPO.

6 After the coup, Director of the POMC clarified four key policies: “detention of individuals; arrest of targets who refused to report themselves; armed groups; all leaders who incite the public...” See Khaosod Online (27 May 2014) “กองกำลังรักษาความสงบเรียบร้อย วาง 4 แนวทาง” at https://www.khaosod.co.th/view_newsonline.php?newsid=TVRRd01URTNnemd3TkE9PQ

referring to them as “targets”.⁷

Such target groups and individual targets are identified and targeted via the monitoring lists prepared by the authorities.⁸ Each list contains personal information, which includes a family history, address, details of personal relationships, travel history, publications on online platforms, political role, photographs of them participating in events, and etc. The information is, however, not likely to be related to “national security” matters directly, and as such is an infringement

and violation of individual privacy.

Based on this military mindset and operations, any individual could be labeled as a “target” if expressing their opinions in a manner that dissents with the NCPO. Many targeted persons have been monitored both on and offline. Expressing opinions on political matters or participating or organizing activities invites military officials to follow or summon the person for a talk. Currently, there is neither clear information of the number of listed individual profiles collected by the NCPO and the army, nor the nature and the use of such information.

The regular surveillance of targeted individuals has also been assigned to military officials as a “mission”, sometimes amounting to a “mission to meet political dissidents” in the region under the POMC.⁹ Such operations have been ongoing over the course of the four years under the NCPO administration, signifying the mindset of military personnel, which isolates persons with different political beliefs to the junta as “political dissidents”.

Moreover, the military opt for Information Operations (IO) and Psychological Operations (PO) to manage the political arena. This practice consists of presenting information to the public in ways that cause damage to an individual’s image, information warfare, and political

7 For example, Mr Parit Chiwarak, aka Penguin, a student at Thammasat University in Pathum Thani province, documented a visit by authorities dated 28 March 2018 that “my neighbor told me there were some uniformed military personnel who drove a camouflage jeep into my village and took photos of my house, while discussing their action of photographing a ‘target’”. Mr Chalita Bantu Wong, lecturer at Thammasat University, documented a sequence of events during the “We Walk for Friendship” program dated 20 January 2018 that “before I took a turn to the AIT gate at Thammasat University, Rangsit campus, a big group of police officers stopped my car and told me to park by the side. While the window was lowered, I heard the police say “the target’s car is here” then the police questioned why I was driving into the university and asked for lecturer Anusorn Unno’s ID card to examine.”

8 News report of Voice TV (7 April 2018) “ล้วงลึก ‘สมุดพก-นับแต่้ม’ คสช. ปราบ ‘บัญชีดำ’?” <https://www.voicetv.co.th/read/r1zuulljG> interviews of informants from a security body. The interviewee stated that operations officers focus on each individual, looking at their history, whether they have been invited or have participated in events, whether they still cause “confusion” and “incitement” to the society, whether they “violate the law” or breach NCPO orders. If an individual is found to have violated the law, measures must be taken to warn or forbid them. The interviewee indicated that the “case files” are collected to prepare information before any initiation of talks with suspects, with specific details of events and periods of time, to prevent any “counter lawsuits” against the authorities and to use as “evidence” during the talks without mentioning the information broadly.

9 Examples of the operations report of local military personnel in the northeastern province of Mukdaharn can be found at Prachatai (21 January 2018) “จากคนเลือดแดง ถึง วาสนา นาน่วม: ‘ถ้าอยากรายงานข่าวของเรา ทำไมไม่มาสัมภาษณ์เรา’” <https://prachatai.com/journal/2018/01/75048>

persecution by prosecutions.¹⁰

Psychological Operations, based on the categorization of civilians as “targets”, advance and lead to the prosecution of targeted groups, to suppress and intimidate “political dissidents” and induce fear of expressing criticism of the NCPO. In “Rinda’s” case, for example, military officials arbitrarily detained and filed a sedition-like offence under Article 116 of the Penal Code and a computer-related offence under the Computer Crime Act against a woman for allegedly posting a rumour about Prime Minister Gen Prayuth Chan-ocha transferring 10,000 million Baht (approximately USD312.5 million) to a bank account in Singapore. In the plaintiff’s document, the military official who brought the lawsuit claimed that “an operation against this target is therefore direct suppression of an individual who employs a dissenting mindset against the NCPO and HE PM [His Excellency Prime Minister] in order to reduce the level of alignment and is likely to cause fear of inappropriate dissemination of information...”¹¹

Because such operations are under military command, personnel at all levels are obligated to comply with centralized orders and not to oppose

their commanders’ assignments. A number of monitored persons have experienced that military or police officials who visit them at their residence are simply following their “commander’s order”, or that some activities have been obstructed or prohibited for reasons of their “commander’s worries”. Often authorities could not clearly explain how some expressions or events cause trouble to or affect national security or public peace and order, instead broadly refer to the “commander”.

“Military everywhere”: The extension of army authority over other perimeters

Another aspect of militarization under the NCPO is the sizeable extension of the army’s role and power over the political structure by reallocating military personnel to civil service positions. As a result, the military has seized control of the state administration and influences government agencies with the military mindset, a routine that is likely to continue for years after the NCPO’s withdrawal.

- **Military takes over executive power**

At present, the NCPO consists of 15 members: 12 military personnel and two police officials, leaving Mr Meechai Ruchupan as the only civilian member. The majority of officers under the NCPO appear to be military personnel. Twenty-seven military personnel and four police officials make up a further of the 34 positions served as Deputy Secretary and advisors to NCPO-position holders.¹²

Furthermore, the NCPO assigned

10 In general, IO is a military operation to counter enemies via “operations aimed to effect or influence the process of determining, the information, and the information systems of the opponent or other targeted groups, including operations to protect information and information systems of our command,” with the goal that “our command” is placed in a “superior” position to the opponent. See more in TLHR article (19 July 2017) “เรียกผิดตัว-บิดเบือนข้อเท็จจริง: ความไร้ประสิทธิภาพของงานข่าว และปฏิบัติการข่าวสารทหาร?” <http://www.tlhr2014.com/th/?p=4701>

11 The plaintiff’s document A.3530/2559 (2016) Criminal Court Note No. 6 “Results of the Examination of Concerned Persons”

12 See NCPO Order No. 6/2017 on Appointment of Officers in the NCPO.

officials to oversee matters overlapping with the administration of a number of ministries, including the Security Department, Social and Psychological Department, Economic Department, Law and Justice Department, Special Operations Department, Office of the Secretary-General of the NCPO, and POMC. This practice leads to the overlap of the use of power between civil servants and military personnel under the NCPO.

Throughout the administration of the military government, Gen Prayuth has put the cabinet, indistinguishable from the NCPO, through five reshuffles. Fifteen military personnel have taken or are in cabinet seats. With the exception of Prime Minister Gen Prayuth Chan-ocha and Deputy Prime Minister Gen Prawit Wongsuwan, military personnel have been appointed to positions in command of important ministries, including the Ministry of Defense, the Ministry of Interior, the Ministry of Education and the Ministry of Justice. The NCPO, and therefore the junta, appears to exercise its authority in the executive branch through decision-making and administration of political, economic and social policies. In addition, the army and the military determine and implement policies relating to foreign affairs, affecting Thailand's international obligations into the foreseeable future.

To affirm its legitimacy, the NCPO has issued 208 orders and 128 announcements, while the Head of the NCPO–Prime Minister Prayuth Chan-ocha–has invoked power under Article 44 of the interim Constitution 2014 to issue 188

orders.¹³ Without a repeal of these orders, which have the effect of legislation, the NCPO's announcements and orders will continue to be in effect even after the NCPO steps down from power and an elected government swears into office.

• Military takes over legislative power

Following the coup, members of parliament and senators were abolished and, in their place, the NCPO established the National Legislative Assembly (NLA), where its members are selected and appointed by the Head of the NCPO. Over the past four years, the NLA has exercised “legislative” authority in lieu of the parliament under a civilian government, with authority to make laws, offer advice and give consent to any accession or ratification to international treaties, and endorse holders of some government or political positions– without the presence of the opposition to maintain checks and balances.

The NLA consists of 250 members, 145 of which are military personnel from all branches, amounting to 58 per cent of all members. Adding members who previously held government, civil service, or government enterprise positions, the number adds up to 223 members or 89 per cent of all members.¹⁴ So far the NLA

13 As at 16 May 2018. See also an article in the TLHR website (19 September 2017) “เมื่อประกาศคำสั่ง คสช. (อจ) ไม่มีวันหมดอายุ” <http://www.tlhr2014.com/th/?p=5202>

14 The number comprises of 90 current military personnel and 55 veterans. Information from Internet Law Reform Dialogue (iLaw) (5 February 2017) “ใครออกกฎหมาย? 1: “สภาพทหาร-สภาพผลประโยชน์” เมื่อคนใกล้ขีดผู้นำประเทศอยู่เต็มสนช.” <https://ilaw.or.th/node/4407>

has issued 300 pieces of legislation.¹⁵ All have been legislated by passage through the unicameral legislature without public participation. Despite the absence of power relations between the current legislators and the Thai people, bills passed through the NLA are equally enforceable and effective as laws passed by a civilian government, and will continue to be so after the NCPO's withdrawal.

The exercise of legislative power under the NLA additionally allows military personnel to interfere with or take advantage of the legislative process in their government capacity. For example, the NLA is in motion to consider a bill tabled to equate military positions with civil servant positions. The proposed bill permits current and former holders of military positions the authority and duty to hold management positions in state administration under the umbrella of the Ministry of Defense. Under this bill, Major General, Rear Admiral and Air Vice Marshal posts are equivalent to Ministerial Permanent-Secretary posts.¹⁶ The 2017 Constitution prescribes that committee members of independent agencies, including the Election Commission, the Ombudsman and the National Anti-Corruption Commission (NACC), shall hold or have held civil servant positions equivalent or higher than Department Director or Division Director for five years or longer. Equating the post of

Major General to Permanent-Secretary therefore authorizes military personnel to take positions in independent agencies.

Committees appointed under the junta for reconciliation and reform also include serving military personnel, from 32 military officials out of 250 in the National Reform Council members, to 65 out of 200 members of the National Reform Steering Assembly. When 78 police officials are included, 39 per cent of both councils would come from military and police forces. This number however does not cover civil servants and other government-related positions who hold the same pro-coup and militarization mindset.

The National Strategy Committee, a leading body in drafting the National Strategy Plan and supervising national reform to be consistent with the Plan, consists of 29 members by position, and qualified members who were appointed by the junta. Twelve qualified committee members will continue to hold their positions for the next five years. Although members by position rotate by term, some members have already been selected, comprising military personnel, the Permanent-Secretary of Defense Ministry, the Commander-in-Chief, Force Commanders, and the Secretary of the National Security Council. The National Strategy Plan is intended to operate for 20 years and therefore overlaps with the future administration of an elected government.

Article 269 of the 2017 Constitution, especially in its transitional provisions, grants power to the NCPO to select and appoint 250 senators proposed by the Election Commission and the Selection

¹⁵ See the Standard (January 2018) “ประธาน สนช. ชี้ ผลงานปี 60 ผ่าน กม. กว่า 300 ฉบับ ยืนยันมีคุณภาพ เป็นไปตามหลักนิติรัฐ” <https://thestandard.co/60-years-more-than-300-laws/>

¹⁶ See Act ร่างพระราชบัญญัติเทียบตำแหน่งข้าราชการทหารกับข้าราชการพลเรือนพ.ศ.... <http://www.senate.go.th/w3c/senate/spaw2/uploads/files/img-180430143459.pdf>

Committee. A fixed number in the Senate are also members by position, ranging from the Commander-in-Chief to Force Commanders. Consequently, the army and the military will remain present in legislative positions and attain legitimacy in exercising legislative power even after the junta has withdrawn from power.

- **Military interferes in the justice system**

Following the coup, the military has interfered in every process of the justice system. According to the TLHR report “Military-Led Justice System”, in the early stages of the junta administration, the NCPO played a key role throughout every process of the justice system, particularly in cases relating to the exercise of civil and political rights. Doing so, the NCPO prescribed offences and violations through its issuance of NCPO orders, granted military personnel power to arbitrarily arrest and detain individuals, obtained information from individuals by unlawful means during their detention in military barracks, transferred individuals to inquiry officers at police stations while the military remained present during the investigation, prescribed military prosecutors under the command of army districts to handle civilian cases, and prescribed military courts and judges the authority to adjudicate civilian cases.¹⁷

Head of the NCPO Order No. 55/2016 was issued on 12 September 2016, ceasing the practice of trying civilians in military courts for cases where alleged offences occurred from

that date onwards. Effectively, cases where allegations happened prior to that date but were filed after the issuance of the Order were still subject to the military court’s jurisdiction. Given the structure implemented by the NCPO, military personnel could still interfere with the justice system at the police and prosecutorial stages. The Director of the Law and Justice Department of the NCPO also is authorized to oversee the Office of the Attorney-General. The Royal Thai Police is under direct command of the NCPO.

The interference in the structure and administration of police forces by the NCPO is evident in the appointment of military personnel as Officers, prescribed in the Penal Code, or as Administrative Officers or Police, prescribed in the Penal Procedure Code, by more than ten pieces of legislation issued by the NCPO. In consequence, the impartiality of the police and inquiry officers, specifically in cases relating to political expression under the NCPO, is compromised.¹⁸

- **Military influences administrative and other government bodies**

Invoking power under Article 44 of the interim Constitution 2014, the Head of the NCPO issued Order No. 51/2017 on Amendments to the Internal Security Act 2008, which reorganizes the structure of the Internal Security Operations Command (ISOC), a crucial body in defending national security under direct command

17 See the TLHR report (2015) “หนึ่งปีหลังการรัฐประหาร 2557 “กระบวนการยุติธรรมลายพรางภายใต้ คสช.” <https://tlhr2014.wordpress.com/2015/06/04/1yraftercoup/>

18 See also the TLHR report (2017) “คสช. กับการแทรกแซงกิจการตำรวจ : เมื่อเจ้าหน้าที่ทหารเป็นพนักงานสอบสวน (1)” <http://www.tlhr2014.com/th/?p=5466> and “คสช. กับการแทรกแซงกิจการตำรวจ : การปฏิรูปตำรวจโดยประกาศ คสช. (2)” <http://www.tlhr2014.com/th/?p=5522>

of the army, by extending the definition of “Internal Security” over public danger. This amendment contributes to the budget readjustment of the ISOC, and restructures “Regional ISOC” and “Provincial ISOC” offices. Under the revision, Army Region Commanders are appointed as Regional ISOC Directors, while other local authorities are appointed as committee members, including Directors of the District Attorney, Corps Commanders, and Commanders of the Provincial Police, among others. On the provincial level where Governors act as Provincial ISOC Directors, the committee consists of the Provincial Prosecutor, Deputy Governor, Army Division Deputy Commander, Provincial Police Commander, Head of the Provincial Office, Head of Provincial Public Works and Head of Provincial City Planning, Army Division Representative and other provincial civil servants.

This Order transformed the ISOC from an agency, which “oversees security operations” to a “network” of security operations and public danger prevention and mitigation, placing administrative agencies, judicial agencies, and local government agencies under the operation of ISOC and extending military power from the Ministry of Defense to give orders or attend local cross-ministry meetings.

Scholars who have studied the role of ISOC suggest that the Command plays a role in establishing local mass groups, devising mechanisms of the Ministry of Interior, the Ministry of Public Health and the Ministry of Education through teacher training, public talks, housewives associations in various fields, and observer networks that monitor movements of local members of the community and their

online activities.¹⁹

The post-coup role of ISOC has been further advanced by its reestablishment as the “core” of operations. Such prominent attribution comes about via legislative means, including the NCPO Order No. 64/2014 on Deforestation and the Forest Masterplan, which grants ISOC authority to order, control and report results of related operations, and subjects related agencies under its direct command.²⁰ Further, ISOC takes part in supporting operations of large development projects in many areas where local communities have been protesting, such as against a coal-fired power plant in Thepha district in the southern province of Songkhla, as well as the exploration and production of a petroleum project in Namoon-Dunsard district in the northeastern province Khon Kaen.²¹

In addition to its role in the political sphere, the military has extended its arm

19 See “พวงทอง ภาวครพันธุ์ : กองทัพ การเมือง มวลชน และความมั่นคงภายในประเทศ” <https://www.the101.world/thoughts/puangthong-interview-on-military-operations/> and “พวงทอง ภาวครพันธุ์: 10 ปี กม.ความมั่นคงภายใน ประชาธิปไตยคือภัยความมั่นคง” <https://www.prachatai.com/journal/2018/02/75615>

20 See also “เปิดรายงาน Land Watch ผลกระทบคำสั่งคสช. 64/57, 66/57 และแผนแม่บทป่าไม้ฯ” https://tlhr2014.wordpress.com/2015/09/22/landwatch_report/

21 ISOC Region 4 has played an important part in the coal-powered plant in Thepha district, Songkhla. This includes its public relations role in engaging the media in reporting on local supporters of the development project. In turns, officials of ISOC had accompanied convoys of the project company to the exploration site, amidst ongoing protest against the project by local communities. See Lertsak Kamkongsak (2 December 2017) “ในนาม กอ.รมน. ข่าขอมผลักดัน โรงไฟฟ้าถ่านหินเทพาด้วยชีวิต” <https://prachatai.com/journal/2017/12/74418>

over management and administration of economic and social policies where it was previously absent or had limited involvement.²² The roles of both ISOC and military personnel across extensive perimeters will endure despite the future withdrawal of the NCPO. Whether the NCPO continues its incumbency, the extension and succession of military power over spheres necessary to continue its influence has already been assured.

2. Constitutionalization of absolutism

The notable characteristic of this coup body is its construction and support for the constitutionalization of absolutism, a power installed during the “State of Emergency”.

A legal system under the rule of law sets in place a system that effectively guarantees individual rights and liberties whereby the use of power in every government level must strictly comply with the law in its form and content. Measures to review the legality and ensure accountability of the executive and legislative branches by the judicial branch must be prescribed and in effect. Mandates of civil law enforcement, including police and the Court of Justice, must be clearly distinguished from those of internal security and military defense forces in accordance with the principle of civilian supremacy.

During periods where there emerge

22 Such as forest and land matters, Special Economic Zones (SEZ), influential figures in local communities, corruption, social order operations, including matters relating to game shops, illegal loans, government lotteries, casinos, sidewalk and public transportation management or public danger mitigation, etc.

situations deemed threatening to the existence of the state, such as public disaster, disease epidemics, warfare, riot, and terrorism, among others, many legal systems allow for the declaration and temporary use of “emergency” law to restore peace and order and maintain ordinary laws—ongoing debate about the merits of such arrangements notwithstanding.²³ Such a system compromises the conditions set out in ordinary laws to guarantee individual rights and freedoms. In some cases, the executive power is extended over some of the legislative power,²⁴ while the judicial branch might refrain from its judicial review of the executive branch, which is generally practiced during ordinary situation. Consequently, many actions taken that result in damage might escape accountability.²⁵ Some legal systems also allow for the transfer of law enforcement powers from the civilian branch to the military.

Absolutist Legal System under the NCPO

Citing the necessity to maintain national peace and order, the use of power by the NCPO in issuing announcements and orders, passing legislation and

23 Worajet Pakeerat (2012) Lectures from State and Public Law. Textbooks and learning materials, Faculty of Law, Thammasat University: pp. 217.

24 See details in the Emergency Decree 2005. Under the Thai legal system, during the state of emergency, the executive branch has the power to pass legislation. See the provision in the Siamese Interim Administrative Act 1932 until current legislation.

25 Research and Consultancy Institute, Thammasat University (2002) French Administrative Law. Bangkok: pp. 83-86.

promulgating the Constitution on the surface appears consistent with the legal exemption during the state of emergency. On the contrary, noticeable differences of the legal practice under the state of emergency and the legal system under the NCPO can be outlined with attention to four factors, as follows:

Factor 1 The sources of law

Staging the coup in 2014, the NCPO issued an announcement that effectively abolished the previous constitutional system under the 2007 Constitution as well as dissolved the cabinet and the parliament. The sources of law that the NCPO based its power on thereafter however do not derive from means of temporary exemption from the legal system that the state of emergency allows.

Factor 2 The nature of the legal system

The NCPO centralizes executive, legislative and judicial branches to one organ without measures for checks and balances, allowing power holders to escape accountability for exercising such powers. By incidents of legal importance, the transformation of centralized powers into the legal system could be divided in three phases:

Initial phase - From 22 May 2014 to the promulgation of the interim Constitution 2014– after the 2007 Constitution was abolished along with the pre-existing constitutional system, the NCPO had not successfully promulgated a constitution, placing Thailand in a legal vacuum. During this period, safeguards to individual rights and freedoms guaranteed by the previous legal system were terminated, while the NCPO used absolute power seized

during the coup to govern and command government agencies and the people by means of its 122 announcements and 178 orders.

Second phase - From the promulgation of the interim Constitution 2014 dated 22 July 2014 until the promulgation of the 2017 Constitution, the NCPO established a temporary constitutional system under the interim Constitution. The interim Constitution transformed the NCPO’s initial seizure of power and incorporated it in the temporary system by prescribing provisions to pardon the coup d’état (Article 48), to guarantee the legality and effectivity of the NCPO announcements and orders (Article 47), and to grant absolute power seized by the NCPO during the coup to the Head of the NCPO (Article 44).

Third phase - After the promulgation of the 2017 Constitution dated 6 April 2017– even after a “permanent constitution” was promulgated, the absolute power granted to the Head of the NCPO by Article 44 of the interim Constitution 2014 remains in force till date. In spite of the safeguards of individual rights and freedoms guaranteed in its provisions, the 2017 Constitution allows the state to take measures, claiming the ambiguous term of ‘national security’, and arbitrarily restrict individual rights and freedoms by exercising its discretion in determining threats to national security.²⁶ The use of

26 The making of law under the NCPO focuses on matters relating national security. Prior to the promulgation of the interim Constitution 2014, the NCPO often cited the necessity to maintain peace and public order when issuing announcements and orders. After the promulgation, such focus has appeared in the passage of invoking power under Article 44 of the interim Constitution to issue orders.

power to serve national security therefore prevails over the rights and liberties of the people.

Factor 3 Legality check and accountability for the arbitrary use of power

Following the promulgation and enactment of the interim Constitution, there are provisions that guarantee individual rights and freedoms consistent with past constitutions and international treaties of which Thailand is a state party. These rights and liberties, however, were exempted from any safeguards from the beginning, due to the lack of an independent third party to review the constitutionality and legality, and the safeguards of human rights of the content and forms of the NCPO's legislation, as well as the enforcement of the NCPO announcements and orders. Additionally, the coup perpetrators could not be held criminally liable, given the provisions in the 2017 Constitution. as well as the enforcement of the NCPO announcements and orders. Additionally, the coup perpetrators could not be held criminally liable, given the provisions in the 2017 Constitution.

Factor 4 Duration of legal enforceability

The absolutist legal system established by the NCPO does not present a temporary, finite state that passed with the promulgation of the 2017 Constitution. On the contrary, Article 279 of the 2017 Constitution affirms the legality and enforceability of all NCPO announcements and orders and Head of the NCPO orders, which continue to be in force and absent of any accountability to the Thai public.

Given the four factors, the use

of the absolutist legal system under the NCPO is not limited to its temporary use during the state of emergency but constitutes a legal system whereby the NCPO exercises absolute power without liability or accountability. Its legal practice also remains part and parcel of the permanent legal system under the new Constitution, despite the future withdrawal of the junta itself. Articles 255 and 256 of the 2017 Constitution also set out so stringent conditions that amendments to the Constitution are almost impossible, making evident the NCPO's intentions to leave its mark on Thai society for the long term.

3. Use of law to deny individual rights and freedoms

Rule by "law" under NCPO

The significant difference between a state under the rule of law and one under the rule of absolute power is the rules-based system. Government agencies and officials under the rule of law could only infringe on individual rights and freedoms if the law grants such power and any infringement must be carried out proportionately. A state under the rule of law also prioritizes the content of law, which is based on safeguards of individual rights and freedoms and guarantees of rights to an effective remedy and a fair trial by a competent tribunal. The justice system, in turn, maintains the supremacy of independence and impartiality to review the enforcement of law and the government's use of power that infringes on individual rights and freedoms.

By contrast, a state under the rule of absolute power, i.e. the NCPO, while it claims to abide by laws, transforms the absolute power seized by the coup to "law"

to govern, as well as to deny individual rights and freedoms, while concurrently it avoids any accountability. The judiciary under such a state guarantees and partially enforces such “law”, giving legitimacy to the NCPO’s law.

Characteristics of the NCPO’s use of law

The NCPO’s use of law to exempt individual rights and freedoms can be identified in terms of three characteristics:

Characteristic 1 The NCPO transformed its absolute power, unlawfully obtained during the coup and disconnected from the people’s will under democratic norms, to “law” in order to affirm its legitimacy and rule of law and shield the arbitrary use of power by the military through two methods. Firstly, the NCPO issues announcements and orders, and concurrently invokes power under Articles 44 and 47 of the interim Constitution 2014 and Article 279 of the 2017 Constitution to render all announcements and orders constitutional, legal and final. Secondly, the NLA created by the NCPO passes legislation, acting in the place of a civilian parliament during ordinary times.

Characteristic 2 Government authorities and courts enforce laws issued by the NCPO to maintain public control, ensure the NCPO’s stability and restrict the individual rights and freedoms of dissenting agents against the NCPO. The exercise of rights and freedoms under the Constitution and international obligations therefore constitute criminal offences under the ruling junta, in an attempt to suppress political expression deemed to oppose the coup or the NCPO.

Characteristic 3 The existing laws are enforced and interpreted in ways

that restrict the exercise of individual rights and freedoms. Key provisions and legislation including lese-majeste under Article 112 of the Penal Code, sedition-like offences under Article 116 of the Penal Code, the Computer Crime Act and contempt of court offences have been broadly interpreted and– as a result– caused uncertainty over the scope of the law. A number of actions not deemed criminal offences under ordinary circumstances are causes for prosecution; individuals exercising their rights could not distinguish legal and illegal acts. The inconsistency of how law is applied and interpreted consequently leads to fear to exercise rights and freedoms and encourages self-censorship.

4. The role of the judiciary as the guardian of the coup and consequences of the NCPO’s law

That the Thai judiciary plays a key role in legitimizing the coup and prolonging consequences of the NCPO’s law is hardly surprising to the public, given the history of the institution’s responses to previous coup d’etat.²⁷ The role of the judiciary in the NCPO regime could be determined in four judicial responses through some

27 The Supreme Court’s verdict No. 45/1952 endorsed the legitimacy of the coup d’etat on 8 November 1947 after which the Thai judiciary’s responses to the coups have evolved into : (1) endorsing the legality of the coup council’s use of power and exempts the coup council and government officials from accountability, (2) enforcing the coup council’s orders, which infringe on individual rights and freedoms, and (3) endorsing the creations of the coup to continue to exist as law even after the coup council’s withdrawal. See also Piyabutr Saengkanokkul (2017) ศาลรัฐธรรมนูญ: ตุลาการ ระบอบเผด็จการ และนิติรัฐประหาร. Bangkok: Same Sky Books.

court's verdicts:²⁸

- **The Court endorsed the legitimacy of the coup staged by the NCPO**

An essential condition in determining whether a coup is successful is whether, once the previous legal system was abolished, the junta could effectively establish a new system. Central to that is the acceptance and compliance of the new system of government officials and agencies. In the beginning, the question lies with the presence of people or government agencies and officials in support or opposition of the coup. However, the situation is often confusing, as to which institution or body would endorse the coup and its abolition of the previous system, in addition to the successful establishment of a new system, is not in the early post-coup period altogether clear.

For the 22 May 2014 coup, the Court of Justice played a key part in such matters. In the case of Mr Sombat Boonngamanong, charged with ignoring an NCPO summons, the defense stated that during the summoning the defendant could not determine whether the coup was successful, given that the King had not issued any document to endorse the NCPO's status. The Supreme Court, however, endorsed the success of the coup, citing that there was no evidence of people or government agencies in opposition of the coup on a level that effectively impeded the NCPO administration. The pre-existing legal system was also deemed invalid by default

as a result of the abolition of the 2007 Constitution; the NCPO was therefore deemed a sovereign authority that could exercise state power (Supreme Court Verdict No. 3578/2017).

- **The Court affirmed the legality of the NCPO announcements and orders, and NLA-legislated laws.**

That the Court of Justice accepted and complies with the NCPO announcements and orders, in addition to the Head of the NCPO Orders and the NLA-passed legislation, is reflected in its verdicts. Affirming verdicts and orders consequently gives an assurance that any output of the NCPO's use of power will be treated as "law". Following the coup, the Court of Justice and the Military Court guaranteed the legality of the NCPO's use of power and the enforcement of law by prosecuting individuals under NCPO announcements and orders as well as NLA-passed legislation, such as the Public Assembly Act 2015 and the Constitutional Referendum Act 2016, or to issue opinions, which affirm the legality of the NCPO announcements.²⁹

- **The Court's verdicts or ruling infringed on rights and freedoms of individuals**

Owing to the fact that the judiciary, both the Court of Justice and the Military Court, adjudicates cases based on NCPO announcements and orders, Head of the NCPO Orders as well as the NLA-passed legislation that violate individual rights and freedoms, verdicts and orders of the judiciary are an infringement of individual rights and freedoms. One court

28 See more in TLHR (2017) "อภินิหารทางกฎหมาย" สถาบันตุลาการกับรัฐประหาร 22 พฤษภาคม 2557 บทวิเคราะห์ 3 ปีรัฐประหารของคสช., http://www.tlhr2014.com/th/?wpfb_dl=42

29 See example in Court Opinion on the Court Authority and Duties of Taling Chan Court K. 7/2016 dated 20 September 2016

ruling, for example, found individuals who peacefully gathered without weapons were guilty³⁰ per NCPO Announcement No. 7/2014, Head of the NCPO Order No. 3/2015 and the Public Assembly Act 2015 of criminal offences. The Court has also ruled that Peace and Order Maintenance Officers legally have the power to detain individuals under Head of the NCPO Order No. 3/2015.³¹

- **The Court granted privilege and impunity to the NCPO and secured it from responsibility for accountability**

Firstly, the execution of the coup is by nature a high crime of treason under Article 113 of the Penal Code. However, when the NCPO promulgated the interim Constitution 2014, Article 48 granted it amnesty for its unlawful act. A pro-democracy group “Resistant Citizens” filed a lawsuit against the NCPO for violating Articles 113 and 114 of the Penal Code, yet the Criminal Court dismissed to accept the case, citing Article 48 of the interim Constitution as exempting the NCPO from any accountability for its actions. Later, the Appeal Court upheld the dismissal of the case for the same reason.³² The case is pending in the Supreme Court.

Secondly, NCPO announcements and orders issued before the promulgation of the interim Constitution 2014, including NCPO Announcements Nos. 37/2014 and

38/2014, put civilians under the Military Court’s jurisdiction for certain offences. A number of individuals saw it was unfit that they would be tried in the Military Court and therefore they filed a complaint for the Court to review the constitutionality of their trial in that court and questioned the consistency of these two announcements with Thailand’s international obligations. The challenge was through two channels; filing a motion in the Military Court urging it to forward the announcements to the Constitutional Court to review whether they were unconstitutional, and filing a motion in the court to challenge its jurisdiction over the case.

In the first channel, the Military Court dismissed all motions, citing that the interim Constitution did not prescribe a mechanism where it could transfer cases to the Constitutional Court. It also issued a ruling that both announcements extending military courts’ jurisdiction over civilians in certain were legal, constitutional and final as per Article 47 of the interim Constitution.³³ The second led to a similar result.³⁴

Furthermore, in the case where former minister Mr Wattana Muangsook lodged a complaint to the Administrative Court to repeal NCPO Announcement No. 21/2014, which prohibits him and 155 other individuals from traveling outside of Thailand, both the Administrative Court of First Instance and the Supreme

30 The case of Weerayuth Kongkanathan appeared in Verdict No. 486/2014 Pathum Wan District Court, etc.

31 Criminal Court Order S. 99/2015 dated 17 December 2015 and Appeal Verdict No. 16241/2016 dated 31 December 2016.

32 Appeal Verdict No. 2196/2015 and No. 18002/2015 dated 23 November 2015.

33 Military Court’s Order of Combat Boongamanong, Jitra Cotchadet, Resistant Citizen, Pansak Srithep, and Natchacha Kong-udon. See more at TLHR (26 February 2017) “บทสรุปการต่อสู้ของพลเรือนที่ไม่ยอมขึ้นศาลทหาร” <http://www.tlhr2014.com/th/?p=3563>

34 Criminal Court and Bangkok Military Court Opinion No. 1/2016 dated 29 January 2016 on the case of Mr Pansak Srithep

Administrative Court dismissed the lawsuit and issued a similar ruling to the Military Court.

Thirdly, the judiciary reaffirms the provisions in Article 44 of the interim Constitution 2014 to allow for the issuance of Head of the NCPO Orders in a similar manner to Article 47, and to refrain from reviewing actions under said article. The Administrative Court of First Instance, for example, dismissed a complaint to review the legality of the Head of the NCPO Order No. 24/2015 on Solutions to Illegal Fishing (Order No. 1938/2015). The Supreme Administrative Court also dismissed a case calling for a repeal of the Head of the NCPO Order No. 4/2016 on Exemptions of the Ministry Regulations from Regulating City Plan for Certain Business Operations (Order FS. 8/2016).

Lastly, government officials, including civil servants, police officials, and military personnel are granted privileges under NCPO announcements and orders, and the Head of the NCPO Orders. Such privileges are clearly illustrated in cases relating to the arbitrary detention of individuals by military personnel for up to seven days, as per Head of the NCPO Order No. 3/2015. In many cases, relatives of the detainees have filed complaints per Article 90 of the Criminal Procedure Code to the Criminal Court to review the legality of such detention, in a manner similar to the writ of habeas corpus. The Court's rulings have echoed the tone that the military has the power to detain individuals and such detention is lawful. ✎

Post-coup four years human rights violations

The three significant political and legal characteristics of the NCPO result in a practice of broad human rights violations, which could be identified in two types: non-prosecutorial violations and political prosecution.

1. “Non-prosecutorial” human rights violations

- **Summoning of individuals, detention of individuals at military barracks and residence visits**

Over the course of four years, military personnel have summoned and detained individuals inside facilities located in military barracks, and visited “targeted groups” at their residences. A number of individuals

have been continuously “monitored”. According to TLHR documentation, at least 876 individuals have been summoned to participate in attitude adjustment sessions, while at least 417 individuals have been threatened, harassed and followed. Many of the total 1,138 individuals have experienced both practices.

Individuals who have been continuously followed mainly include politicians and Red Shirt leaders who are influential in local communities. These groups are believed to have played an important role in Thai politics prior to the 2014 coup. Having closely monitored and compiled details of an individual’s profile and personal information, military officials regard them as “main targets” and assigned local operations officers to observe, summon and detain them at military barracks after the coup.

Meanwhile, persons who engage in anti-coup or anti-NCPO activities are often followed by the authorities after an event concludes or following their political expression. They include students, activists, academics, politically active individuals, and people with prominent online profiles. For this group, the authorities do not necessarily document and list their profile prior to the violations, but rather “add them to the list”. These individuals are frequently summoned, followed back home, visited at home, or prosecuted following their appearance at

political events.

Authorities sometimes monitor persons who have previously been involved with the Yellow Shirt movement or People's Democratic Reform Committee (PDRC) members if they continuously express criticism of the NCPO, like Mr Veera Somkwamkit. Local communities that protest against government or private development projects are also closely monitored and visited, particularly during the preparation of their gatherings, after the protests have taken place or during government field visits.

During the first year after the 2014 coup, authorities often carried out these violations under martial law (imposed on 20 May 2014 and lifted on 1 April 2015), which granted them higher power than the civilian law enforcement. Such authority allowed them to detain individuals for up to seven days without being informed of charges or being brought before a court. After the lifting of martial law, The Head of the NCPO invoked power under Article 44 of the interim Constitution 2014 to issue two orders: Head of the NCPO Orders Nos. 3/2015 and 13/2016. Both orders grant military personnel power similar to that prescribed in martial law. The orders and Article 44 have been used since to arrest and detain individuals at military barracks and search their belongings and residences.

These operations have changed over the course of time and according to the political situation. Between May 2014 and July 2014, the NCPO issued summons for 472 individuals. They separately summoned others without official documents, especially in provinces where military personnel directly contacted and

detained individuals at military camps. A number of individuals were also detained by military officials at their barracks for up to seven day, as a result of protesting against the coup. In some cases, however, detainees were held in military custody for more than seven days, including Ms Kritsuda Kunasen, Mr Yongyuth Boondee or "Daeng Shin-chan", and Mr Sarawut Bamrungkittikul, to name a few. The military further forced all detainees to sign a Memorandum of Understanding (MOU) prohibiting them from participate in political activities.

Following that, the NCPO made the act of not reporting to its summons a criminal offence under NCPO Announcement No. 41/2014.³⁵ To date, at least 14 individuals have been prosecuted for not reporting themselves, while others fled and became political asylum-seekers or refugees. NCPO Announcement No. 40/2014 also put in place a criminal offence for individuals who fail to comply with conditions mapped out in the MOU under the imposition of martial law, which the military forced detainees to sign. At least three persons have been charged with said violation. Both types of lawsuits are under the Military Court's jurisdiction. Additionally, authorities often cite these announcements to "warn" the signatories to refrain from participating in political activities.

Military officials also have held persons incommunicado in facilities located in military barracks, barring

³⁵ This order prescribes a maximum sentence of two years' imprisonment or a maximum fine of 40,000 Baht (approximately USD1,250) or both. The order also has a provision that prohibits financial or property transactions.

the public, family members or legal representatives from contacting or visiting them. The Courts further refrained from reviewing such use of power, citing the legality of NCPO announcements and orders. In the majority of cases, detention was a result of individuals doing nothing rather than exercising fundamental rights to freedom of expression and peaceful assembly.

Another pattern of gross human rights violations by military personnel is the detention of a person's family members. Failing to monitor "targeted individuals"³⁶ or "primary targets", authorities in some cases take family member(s) into custody as– in the authorities' terminology– "secondary target(s)" in order to pressure the "primary target" to report to the authorities. After such practices subsided, military officials opted for harassment and intimidation of students' or activists' families at their residences. These psychological operations aim to control any movements or activities of "targeted individuals", and constitute a gross violation of freedom of expression, the right to privacy and the right to security.

Throughout the first two years after the coup, the authorities have closely monitored "targeted individuals". Most of the operations were directly carried out by military officials. Individuals who have repeated their criticisms of the NCPO or

continued their political activism were repeatedly summoned to military camps, while some were ordered to report themselves weekly, and others were frequently monitored and visited at their residences. In the beginning, many of those who were summoned and released had to notify and request permission from the authorities when they wished to travel outside of Thailand.³⁷ In some areas, authorities requested persons they previously informally summoned to notify local military officials whenever they were traveling outside of their area, along with their purpose of travel. The right to freedom of movement and the right to privacy were broadly and extensively violated by the military.

Patterns of the military's periodic monitoring of individuals include following them to their residences and taking photographs, setting up coffee meetings, or "requesting for cooperation" at events such as reconciliation activities. During periods of intense political activity– such as the run-up to the Constitutional Referendum, ousted Prime Minister Yingluck Shinawatra's rice-pledging scheme verdict, and Prime Minister Gen Prayuth Chan-ocha's field visits– these practices become more frequent and extensive.

In 2017, particularly after the promulgation of the 2017 Constitution in April, police officers tended to gradually carry out these operations instead of

36 After the coup, TLHR found at least ten cases where relatives of targeted persons were detained. These relatives however were not involved in any political activism. See more at TLHR (30 June 2016) "รายงานพิเศษ: เมื่อ 'การคุกคามญาติพี่น้อง' เป็นรูปแบบหนึ่งในปฏิบัติการละเมิดสิทธิของ คสช." <http://www.tlhr2014.com/th/?p=782> and TLHR (24 April 2018) "ปฏิบัติการเยี่ยมบ้านคนอยากเลือกตั้งเพิ่มอุณหภูมิแล้วร้อนให้ประเทศไทย" <http://www.tlhr2014.com/th/?p=6958>

37 As per the NCPO Announcement No. 21/2014, 155 individuals who have reported themselves have been banned from traveling outside of Thailand, except with permission from the Head of the NCPO. Later, the Head of the NPCO Order No. 25/2016 was issued to repeal the Announcement, effective from 1 June 2016 onwards.

military officers, sometimes they combined the force. Detention carried out by military officials occurred periodically, such as in the case of Mr Charoenchai Sae-tang for seven days in the first quarter of 2017, and the arrest and detention of three leaders of the People's Movement for a Just Society (P-Move) following their protest in Bangkok in May 2018, to name a couple of instances.³⁸

The military, however, devised certain “terms” to reduce the sense of the severity and intensity of the operations, i.e. “attitude adjustment”, “invite for a talk”, “grab a coffee” or “request for cooperation”. These terms are all euphemisms for coercive, sudden and harassing operations that include detention at military camps, summoning, and visiting individuals’ residences.

- **Restrictions on and interference in public activities**

“Public space” in Thai society has been shrunk by the NCPO. Through its imposing conditions and restrictions on, shutdowns of, and interference into public events, the NCPO and the military violate people’s rights to freedom of expression, association and peaceful assembly. In the course of four years, at least 264 activities have been shut down or interfered with by military personnel and the NCPO. Of these,

at least 136 events were shut down, and in at least 128 the authorities resorted to intimidation, interference and imposition of conditions.

Patterns of restrictions and interference comprise of: authorities directly intervening and shutting down events whose content has been deemed political or anti-coup, inasmuch as they allegedly contain political purposes and might incite social division or threaten national security; authorities requesting cooperation without clearly indicating their reasons and citing their “commander’s worries” of the event; and authorities pressuring owners of venues where events were to take place, including private spaces and universities, to disallow the activity from taking place at the venue.

In cases where authorities indirectly restrict an event, they opt for a meeting with event organizers then set out conditions on the event or request cooperation. These demands are, for example, to change speakers at the event, to not discuss anything to do with the NCPO, and not use certain terms, including “dictatorship” and “treason”. Military officials at local barracks also visit and request deans, management-level staff and lecturers at universities to control student activities and notify local military offices of any activities about to take place. Educational institutes have been incorporated into the restrictions on individual rights and freedoms in holding public events: some events they planned to hold at their venues have been prohibited, and student organizers have been summoned for talks.

Additionally, public events are often monitored by plainclothes military

38 TLHR found that the authorities’ monitoring and surveillance continued. Some Red Shirt leaders in Northern Thailand reported that they have been invited to grab a coffee with police and military officials weekly, amounting to more than 100 times during the past four years. In the Northeast, to date some Red Shirt members were summonsed monthly at local military barracks. Local politicians have also been visited by police and military officials at their residence almost daily for more than three years.

officials who record sound and video of the event. The practice compromises the organizers and participants' sense of security. Any activities initiated by political parties have also been prohibited over the last four years under NCPO Announcement No. 57/2014, which bans political parties from holding conferences, meetings or political activities to date.

- **Restrictions and control of dissemination of information**

The control of public information in the media represents a crucial attempt of the NCPO to manage public perceptions. Authorities opted for a ban on broadcasting about the coup of TV and radio channels afterwards. Later they issued several NCPO announcements and orders to control the dissemination of information on media platforms.

Important announcements in this regard include NCPO Announcement No. 97/2014 on Cooperation with the NCPO and the Dissemination of Information to the Public, and NCPO Announcement No. 103/2014 on Amendments to NCPO Announcement No. 97/2014. Both announcements prohibit all media

platforms to report seven types of news.³⁹ This ban grants law enforcement authority to exercise a broad interpretation of the law. Article 3(3) bans reporting "in bad faith" of any information deemed critical of the NCPO administration and compromising the NCPO's credibility with false information. It further grants power to authorities to report media and individuals who fail to comply with their orders to their vocational association and request an investigation into their professional ethics. The NCPO has invoked power under both announcements along with Head of the NCPO Order No. 3/2015 to summon a number of media outlets' staff.

The National Broadcasting and Telecommunications Commission (NBTC) also invokes power under Article 37 of the Broadcasting and Television Businesses Act 2008, which bans any broadcasting that includes content deemed threatening

39 NCPO Announcements No. 97/2014 and No. 103/2014 prohibit all media to report or disseminate the following information:

1. Statement that is false, or that could defame or create hatred to the monarchy, the heir-apparent, or any member of the royal family;
2. Information that is detrimental to national security, including those that are defamatory to other people;
3. Criticising, in bad faith, the NCPO administration and compromising the NCPO's credibility with false information;
4. Audio or visual information or video that is confidential information of state agencies;
5. Information that could lead to confusion, could provoke conflict, or could cause social divide in the Kingdom;
6. Persuasion for any grouping that leads to any resistance to officials or persons related to the National Council for Peace and Order;
7. Threat to harm any person that could lead to panic or fear among the public

to national security. Doing so, the NBTC has exercised authority for the NCPO in monitoring the reporting of media outlets. In many incidents this practice resulted in a TV “screen turnoff”. The Internet Law Reform Dialogue (iLaw)⁴⁰ documented that from 22 May 2014 to 10 April 2018, the NBTC has put in place at least 52 bans, which punished media outlets who reported political content, per relevant NCPO announcements and orders and Article 37 of the Act. Voice TV has faced the highest number of restrictions, at 19 bans, followed by Peace TV at 12. In more than 34 bans out of the 52, the NBTC cited violations under NCPO announcements and orders. In cases where reasons were given, the NBTC always cites the content of reports relating to criticisms of the NCPO.

The Head of the NCPO also invoked power under Order No. 41/2016 to permit the NBTC commissioners to shut down TV channels that violate NCPO Announcement No. 97/2014. The NBTC therefore could act without any criminal, civil or administrative liability, amounting to “impunity” of the abuse of power.⁴¹

Furthermore, the NCPO’s

interference in the media extended to a visit to board members of media agencies to pressure and effect dismissal of reporters and producers. Reportedly, the NCPO invited board members of PPTV for a talk and requested them to dismiss News Director Mr Wanchai Tantiwittayapak after his continued criticisms of the NCPO. Wanchai later resigned.⁴²

The Internet is another sphere where the NCPO attempts to take control of the dissemination of news and information. Several agencies were established to monitor online activities, including the “Social Media Working Group” per NCPO Announcement No. 26/2014, which monitors information on social media platforms, the army-based “Army Cyber Center”, which monitor matters relevant to national security, and the National Cyber Security Preparation Committee under the Ministry of Digital Security and Society (DE). In 2015, the NCPO proposed a plan to set up a “Single Gateway”, which reduces the existing Internet portals to a single channel, facilitating its control and capturing of transmitted data. However, this plan was delayed due to a strong public outcry from among Internet users in Thailand.

In 2016, the NLA passed the revised Computer Crime Act, with amended provisions from the pre-existing 2006 Act. As a result, the “Computer Information Screening Committee” was established to block online content deemed threatening to public order and morals. Such information, however, is not necessarily illegal.

40 TLHR (25 April 2018) “สถิติการพิจารณา ลงโทษสื่อมวลชนภายใต้กลไก กสทช. ตั้งแต่ 22 พฤษภาคม 2557” <https://freedom.ilaw.or.th/blog/Statistics-on-media-punishments-by-NBTC-since-2014coup> These statistics do not include the shutdowns of local radio stations due to political content. Several stations re-registered their licenses and reopened the stations after being closed, but have been closely monitored by military officials and NBTC staff. In many areas, radio producers and DJs were reportedly called by the authorities and warned of their program content.

41 See TLHR (29 March 2017) “44 Power: ไม่ใช่แค่ คสช. ที่มีอำนาจโดยปราศจากความรับผิดชอบ กสทช. ก็เช่นกัน” <http://www.tlhr2014.com/th/?p=3852>

42 See Prachatai (2 April 2017) “เหตุวิจารณ์ คสช. และปมนาฬิกาหุ ‘วันชัย ตัน’ ต้องลาออกจาก PPTV” <https://www.prachatai.com/journal/2018/04/76187>

The NCPO itself actively blocks websites whose content it deems as relating to “security”. The secretary of the NBTC noted that, during the first three years after the coup, the NBTC has cooperated with Internet Service Providers (ISPs) to close down at least 6,300 websites whose content was deemed “inappropriate”. In addition, major social media companies including Facebook and YouTube have been requested to take down pages containing information relating to the monarchy.⁴³

• **Restrictions of community rights and local community activities**

In the past four years, space for local groups and communities affected by government policies and projects has been shrinking. Their activities and calls, albeit non-political in the sense that they do not make anti-coup criticisms, mostly concern environmental impacts on the communities and their livelihoods. Nevertheless they too were barred by the NCPO.

At least 66 local groups and organizations have been restricted in their right to freedom of expression and peaceful assembly, including protests and events in relation to matters of the environment, forests, land, waterways, coal plants, power plants, public health, labor rights and other public policies. Military officials often cite power under martial law, the Head of the NCPO Order No. 3/2015 and Head of the NCPO Order No. 13/2016 to summon community leaders. In some

cases the authorities opt for a residence visit to warn or prohibit potential protests or events. Such requests are accompanied by claims that the exercise of fundamental rights causes “chaos”. Community leaders are also regarded as “influential figures”.⁴⁴ Additionally, educational and cultural events have also been interpreted as “seditious and inciting” the public to oppose the government and, therefore, have been shut down. Some organizers have been asked to sign an agreement to stop their protests, similar to a request made to leaders of political groups. Authorities sometimes request a takedown of protest signs.

In line with local administrative agencies and civil servants, the military takes steps to facilitate advantages to investors and to the detriment of local communities. In the case in northeastern province Loei and northern province Lamphang where communities were affected by coal plants, military officials sat at a table where concessionaires placed a sign-up sheet for participants during a reconciliation discussion. Furthermore, they were involved in the concession map audit, a public hearing in support of coal plants, and barring of locals from participating in a public hearing on the same.⁴⁵

Individuals who have faced the impact of the NCPO’s policies and projects have also faced human rights violations.

43 See BBC Thai (10 May 2017) “รายงาน: คุณสื่อยุค คสช. เป้าจริงคือ “สื่อออนไลน์”?” <http://www.bbc.com/thai/thailand-39858097>

BBC Thai (16 May 2017) “ไทยยังไม่ปิดเฟซบุ๊ก แม้เลย “เส้นตาย” กำจัด “ภาพหมิ่นฯ”” <http://www.bbc.com/thai/39931702>

44 See TLHR (24 May 2016) “คุยกับผู้มีอิทธิพลตามคำสั่งของ คสช.: ครบรอบ 2 ปี รัฐประหาร “คสช.กำลังคืนความทุกข์ให้พวกเรา”” <http://www.tlhr2014.com/th/?p=2085>

45 See TLHR (3 June 2016) “การจัดการทรัพยากรเหมืองแร่กับการละเมิดสิทธิมนุษยชนหลังรัฐประหาร (2) : บูรณาการการใช้อำนาจของทหารกับการปฏิรูป” <http://www.tlhr2014.com/th/?p=2020>

Infringing on freedom of expression, the authorities banned them from lodging a complaint, forming an association or gathering, including by way of protests on land appropriation under the Special Economic Zone (SEZ) plan. Particularly in northern province Tak, military and police officials interfered with and shut down a protest organised by locals. In this case, authorities later expedited the appropriation of land. A local community protesting against land appropriation under the Forest Restoration policy joined the People's Movement for Justice (P-Move) to address a number of interventions and restrictions the authorities have imposed on them during the course of four years.⁴⁶

The state and capital have long advanced each other's interests in Thailand. The post-coup political climate, however, enables the implementation of special laws and powers in favour of capital. As a result, rights to freedom of expression, association and peaceful assembly in response to projects that have an adverse effect on local communities have been increasingly violated. The shrinking public participatory space in the process relating to government and corporate mega projects has in effect restricted the power to negotiate, effecting community rights and the right to livelihood, and participation in the allocation and utilization of natural

resources.

- **Torture and detention of civilians in military facilities**

The military practice of incommunicado detention, detainees' lack of access to family members and lawyers, and the absence of judicial review result in an environment where detainees are at risk of enforced disappearance, torture, inhuman or ill-treatment, and arbitrary use of power. After the coup, at least 18 allegations were reported of people being tortured by authorities during military custody under martial law, NCPO announcements and orders, and the Head of the NCPO orders. On 7 March 2015, at least four suspects of the Criminal Court bomb case reported that they were allegedly punched and kicked around their head, chests, and backs, in addition to having threats of assault for information. Some suspects were also allegedly electrocuted during the detention under martial law from 9 to 15 March 2015, leaving marks on their skin.⁴⁷

Suspects in weapons-related cases also alleged being tortured in custody by interrogators who they believe were state authorities. A suspect indicated having an electrical cord wrapped with cotton inserted into his anus and sexual organ, followed by being soaked and electrocuted. Furthermore, a pistol was allegedly inserted into his mouth while he was forced to confess where he hid the

46 See TLHR (15 October 2015) "กลุ่มคนแม่สอดรักษากันจัดเวที ค้านใช้ม.44 เว้นคืนที่ดินทำนิตมอุตสาหกรรม" https://tlhr2014.wordpress.com/2015/10/15/maesot_raktin/ TLHR (23 December 2015) "ทีมผู้พิชิต "เดินก้าวแลก" หลังเข้าค่ายผ.มทบ.33" <https://tlhr2014.wordpress.com/2015/12/23/pmove-march2/> TLHR (2 May 2018)

"อ้างคำสั่งปราบปรามผู้มีอิทธิพล ทหาร-ตร. บุกคุมตัว 3 แกนนำเครือข่าย P-move ที่ลำพูน" <http://www.tlhr2014.com/th/?p=7085>

47 See TLHR (17 March 2015) "แถลงการณ์เรียกร้องให้มีการสอบสวนการทรมานผู้ต้องหาคดีระเบิดศาลอาญา

และยุติการใช้อำนาจตามกฎอัยการศึก" http://www.tlhr2014.com/th/?wpfb_dl=48, and a report on Mr Sansern Sriounruenat Prachatai (2015) <https://prachatai.com/journal/2015/03/58442> และ <https://prachatai.com/journal/2015/07/60443>

weapons.⁴⁸

To date, no independent, impartial body has investigated these allegations, while the suspects have not been provided with effective remedies. The National Human Rights Commission of Thailand (NHRCT) previously investigated into the allegations, however claimed in its report that there was no reasonable ground to believe that acts of torture had taken place. The same report further notes a number of obstructions to the obtaining evidence about the allegations promptly, and the lack of cooperation from authorities.⁴⁹ These allegations if true constitute violations of Thailand's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

In addition, the military established remand facilities in military barracks to detain civilians, such as Nakhon Chaisri Temporary Remand Facility (located in the 11th Army Circle, Bangkok).⁵⁰ Bangkok Remand Prison's statistics indicate that at least 47 civilians and two government officials have been detained at the Nakhon Chaisri facility between 14 September

2015 and 8 March 2016. Grounds for detention include illegal possession of guns and explosive devices, narcotics offences, the lese-majeste offence (defaming the monarchy) under Article 112 of the Penal Code, burglary and robbery under the Penal Code, and violation of the NCPO order banning political gatherings. The remand facility also operates under direct command of the army, instead of the Department of Corrections. Visits by the public are therefore impeded; lawyers provide counsel to their clients in the presence of military officials. Moreover, there is no clear pattern or principles for determining in which facility individuals are detained; the decision is subject to the authorities' discretion.

The first group of civilian detainees in this facility were suspects of the Ratchaprasong bomb case. One of the suspects Mr Adem Karadak, following his release reported that he was tortured during the investigation. Another set of detainees includes "Mor Yhong" or Mr Suriya Sucharitpolwong, who was charged with threatening the monarchy under lese-majeste offence of Article 112 of the Penal Code. Later, Pol Maj Pakorm Warunprapa and Suriya died in detention at this facility. According to the Department of Corrections' announcement, the cause of death for Pakorm was suicide, while Suriya was said to have died of a blood infection. These claims, however, are broadly questioned by the public.⁵¹ The facility continues to detain individuals till date.

48 See Prachatai (10 October 2014) "รายงาน: ข้อมูลเบื้องต้นการซ้อมทรมานผู้ต้องขังคดีอาวุธ หลังรัฐประหาร 2557" <https://prachatai.com/journal/2014/10/55937>

49 See also report No. 1270-1294/2015 of the National Human Rights Commission dated 24 November 2015

50 The remand facility was established per the Ministry of Justice's Order No. 314/2015 dated 11 September 2015 during the administration of then Minister Gen Paiboon Koomchaya, who cited reasons including security, suitability for detention and detention practice of cases relating to national security whereby alleged offenders should not be detained with others charged with different offences.

51 See TLHR (2016) "เปิดสถิติของผู้ต้องขังและผู้คุมเรือนจำชั่วคราวสถานที่ซึ่งหมอบของตายครบรอบหนึ่งปี" <http://www.tlhr2014.com/th/?p=2693> and "คุกทหาร: ความยุติธรรมห้ามเข้า" https://tlhr2014.wordpress.com/2016/03/18/military_prison/

2. Human rights violations as a form of political prosecution

In its effort at restricting human rights, the NCPO not only employs flagrant and physical operations against those opposing its coup and continued hold on power, but also has incorporated instruments in “the justice system” to persecute dissidents and suppress freedom of expression. Military officials have directly filed the majority of cases relating to rights and freedoms under the NCPO. Based on information the Judge Advocate General’s Department (JAG), between 25 May 2014 and 3 October 2017, at least 2,408 civilians were prosecuted in 1,892 cases in military courts located throughout Thailand. Approximately 369 civilian cases involving up to 450 individual defendants remained pending before military courts.⁵² In the past four years since the coup, the military-led justice has not only occurred in the military courts, but also in the civilian courts. The pre-existing laws and NCPO instruments which have been extensively used to prosecute people include;

- **Lese-majeste (Article 112 of the Penal Code)**

Since the earlier 2006 coup, there has been an intensive use of lese-majeste law against expression with regards to the monarchy. However, after the 2014 coup, Article 112 has been elevated to be one of the NCPO’s tools to significantly suppress political expression. Prosecuting individuals who have expressed opinions in relation to the monarchy has been one of the NCPO’s major policies since its

seizure of power.⁵³

At least 162 individuals in 112 cases have been prosecuted under this article. A hundred individuals were charged with allegations relating to their exercise of freedom of expression, and 62 to impersonation. TLHR has taken 54 of these cases, with 64 clients in total. In this number, at least 25 individuals have been subject to the Military Court’s jurisdiction, and 20 have come under the Court of Justice.

Suspects and defendants of lese-majeste cases have been deprived of their right to a fair trial, such as the right to bail or provisional release. The Court has denied the bail of 45 suspects, amounting to 70 per cent of the total of 64 suspects and defendants. The right to be tried in an open court in 17 cases has been violated, at 43 per cent of the total of 54 cases. Many cases have been delayed, specifically in the Military Court, while the suspects or defendants are detained during the proceedings. Consequently, many individuals opt for a guilty plea rather than a prolonged trial.

The ratio of convicted to acquitted individuals charged with lese-majeste has also increased after the 2014 coup, and even more so in the Military Court. The sentence is typically of eight to ten years’ imprisonment. As a result, Thailand has seen accused in multiple cases convicted by the Military Court to unprecedented

⁵² US State of Department, Thailand 2017 Human Rights Report, <https://www.state.gov/documents/organization/277365.pdf>

⁵³ After the coup, the NCPO summoned many individuals who have campaigned for a repeal of Article 112 of the Penal Code or have expressed opinions or comments deemed critical of the monarchy. NCPO Announcement No. 37/2014 was issued to bring Article 112 offences under the Military Court’s jurisdiction. The NCPO also expedited pre-coup delayed proceedings.

terms of imprisonment, including 70 years for Mr Wichai, 60 years for Mr Pongsak, and 56 years for Sasipimon. These sentences were halved due to the defendants' guilty pleas.

Furthermore, the interpretation of Article 112 has been broadened so far as to criminalize, among other things, an image of the Royal Dog published online along with sarcastic comments; liking a post whose content constitutes a breach of lese-majeste, and negligence to warn or call out individuals whose comments violate the article, i.e. the case of Ms Patnaree Charnkij or a prominent activist "Ja New"s mother.

Following the passing of King Bhumibol (King Rama XI) in October 2016, a "witch hunt" of certain groups took place, followed by a number of lese-majeste cases.⁵⁴ After the succession of King Maha Vajiralongkorn (King Rama X), the trend subsided. However, some prominent cases took place during this period, including the case against lawyer Prawet Prapanukul, five persons who liked and shared posts on ex-lecturer at Thammasat University and political refugee "Somsak Jeamteerasakul", persons who torched an arch with King Rama X's portrait, and a summons of now self-exiled activist Ms Chanoknan "Cartoon" Ruamsab and the conviction of "Pai Dao Din", who shared a BBC Thai article of King Rama X's profile.

In 2017, despite the decrease of

lese-majeste cases, other measures were taken by the NCPO, such as the use of Head of the NCPO Order No. 3/2015 to detain individuals at military barracks in the case of Mr Charoenchai Sae-tang– an activist who campaigned for a repeal of Article 112, and visits to the residences of Internet users who liked or followed Facebook pages with political content relating to the monarchy.⁵⁵

Under the NCPO, there is an absence of public events, campaigns or talks in relation to Article 112 of the Penal Code, in contrast to the pre-existing campaign to repeal such articles prior to the coup. Before, some seminars on the enforcement of the article, on the other hand, were fairly visible.

- **Sedition-like offence**
(Article 116 of the Penal Code)

Prior to the 2014 coup, the "sedition" offence was used infrequently. In contrast, the article has become one of the most used tools of the NCPO to restrict freedom of expression. NCPO Announcement No. 37/2014 brings the offence under the Military Court's jurisdiction. To date, at least 92 persons in 37 cases have been prosecuted under Article 116. Criticisms of the NCPO and Head of the NCPO have been cited as grounds for the lawsuits in 20 cases. Other people who have expressed their opinions, though not directly relating to the coup, affecting the NCPO's use of power also have been charged. The latter include the posting of a letter criticising the then draft constitution, or sending a

54 Royal Thai Police (RTP) gave a press interview dated 9 November 2016 that after the passing of King Rama XI on 13 October 2016, at least 27 cases were filed, the accused in ten of which the authorities could track down and prosecute. See TLHR (15 November 2016) "1 เดือนหลังการสวรรคต: ประมวลสถานการณ์ความขัดแย้งและการดำเนินคดีมาตรา 112" <http://www.tlhr2014.com/th/?p=2754>

55 See TLHR (22 December 2017) "1 ปี การคุมขัง 'ไผ่ ดาวดิน' กับสถานการณ์มาตรา 112 ในรอบปี 2560" <http://www.tlhr2014.com/th/?p=5864> and TLHR (28 December 2016) "เมื่อคนกดไลค์-กดฟอลโลว์เฟซบุ๊กถูกเจ้าหน้าที่ติดตามตัว" <http://www.tlhr2014.com/th/?p=3133>

symbolic message with a red water jug.

There are however seven cases where military and public prosecutors issued a non-indictment decision, or the court dismissed the case, citing that expression of opinions did not constitute elements of a crime under Article 116 of the Penal Code. In the case of Rinda who published a Facebook post saying that Gen Prayuth transferred 10,000 million Baht (approximately USD312.5 million) to a bank account in Singapore, the Criminal Court and the Military Court agreed that the post did not violate Article 116 but potentially constituted defamation; the Military Court therefore dismissed the case. In the case of Teerawan who posed for a photograph with a red water jug signed by ousted ex Prime Minister Thaksin Shinawatra, the military prosecutor did not order an indictment.

Article 116 has been broadly interpreted and incorporated under the NCPO to prosecute individuals who peacefully exercise their freedom of expression for serious acts of sedition. The repeated trend of allegations has also shown the interpretation of “the government” as “the state”, and that the security of the NCPO and the military are regarded as “national security”, however different they may be.

- **Head of the NCPO Order banning political gatherings and the Public Assembly Act 2015**

After the imposition of martial law dated 22 May 2014, the NCPO issued Announcement No. 7/2014 banning any gatherings of five or more persons and setting a maximum sentence of one year’s imprisonment and a maximum fine of 20,000 Baht (approximately USD625). The

lifting of martial law, however, replaced such restrictions with the Head of the NCPO Order No. 3/2015, of which Article 12 prohibits gatherings of five or more individuals for political purposes with a maximum sentence of six months’ imprisonment or a maximum fine of 10,000 Baht (approximately USD313) or both. Later the NLA passed the Public Assembly Act 2015, effective from 13 August 2015 onwards.

Enforcing a set of legal bans on gatherings, the military government has enacted both the Head of the NCPO Order No. 3/2015 and the Public Assembly Act to restrict freedom to peaceful assembly. Since the content of both instruments is the same, the Order, issued by power under Article 44 of the interim Constitution 2014, should have been replaced when the Public Assembly Act 2015 came in force.⁵⁶

At least 378 individuals in 50 cases have been charged with offences related to political gatherings of five or more persons to date. During certain periods, the numbers of prosecutions have increased: in particular, 142 persons were charged during the opening of the Referendum Watch Center in many provinces in the run-up to the Constitutional Referendum in August 2016, and 106 persons were charged in eight cases during the gatherings of “We Want to Vote Movement” in 2018.

The content and enforcement of the Public Assembly Act itself underlines the violation rather than protection of the freedom of peaceful assembly.

56 See TLHR (1 April 2018) “3 ปี สิ่งเสมือนกฎหมาย” ให้อำนาจทหารกว้างขวาง ขาดการตรวจสอบ ในนาม “คำสั่งหัวหน้า คสช.ที่ 3/58” <http://www.tlhr2014.com/th/?p=6768>

Under the Act persons must give 24-hour notice to the authorities of a potential gathering; and authorities have the power to place conditions on or interfere with the gathering. In practice, government officials exercise discretion to restrict the exercise of rights and therefore place such stringent conditions on gatherings that the organizers and participants could not possibly follow them.

At least 214 have been charged with offences under the Public Assembly Act in 15 cases. The majority of affected individuals are members of local communities who protest against development projects in their respective areas, including the move of a Bus Terminal Station in northeastern province Khon Kaen, an 18-province meeting to call for a repeal of Article 34 of the Royal Decree concerning Fisheries, an anti-coal mine local group examining the content of mineral carriages in the northern province Pichit, the anti-Thepha coal-fired power plant group submitting a letter to Prime Minister Gen Prayuth Chan-ocha in the southern province of Songkhla, and a gathering of an anti-coal mining activists in Kon Rai Baan Kerd outside the Subdistrict Administrative Organization during a meeting in northeastern province Loei.

- **Computer Crime Act 2007**

The public already viewed pre-coup enforcement of the Computer Crime Act 2007 as problematic. Article 14(1) of the Act prescribes that, “input, into computer system, forged computer data in whole or in part or false computer data in a manner likely to cause injury to another person or the public”. It has been broadly used as a defamation-like offence. After the coup, the military continued to use the provision

to press charges against persons who criticise or present information criticising the use of power by the military and the NCPO. Despite the amendments to the Act in 2017 to exempt the acts outlined in Article 14(1) from being prosecuted as defamation offences – given that they overlap with the offence of defamation under the Penal Code – law enforcement still permits the use of the revised charter to restrict freedom of expression and repeat the previous practice up to the present.

A Lahu rights activist Mr Maitree Chamroensuebsakul, for example, was charged with the Article for allegedly publishing a Facebook post saying that a military official slapped Lahu locals who gathered around a bonfire; the Provincial Court of Chiang Mai later dismissed the case. Mr Thanaphon Udomsin was also accused by a military official of violating the Computer Crime Act, for posting comment on people who died during the crash of the 3rd Army Area Deputy Commander’s helicopter along with an image of a three-finger salute. Pheu Thai politician Watana Muangsook was also charged under the Act for allegedly posting content that criticised the NCPO of seizure of power and described Thailand as a fallen state, together with sarcastic comments about Prime Minister Gen Prayuth Chan-ocha and Deputy Prime Minister Gen Prawit Wongsuwan.

- **Contempt of Court**

Articles 30 - 33 of the Civil Procedure Code (contempt of Court) and Article 198 of the Penal Code (insulting a court or judges), which prescribe the offences related to contempt of Court, are instruments for the NCPO to charge

activists, scholars and politicians who criticise the role and the use of power of the judiciary after the 2014 coup. Many allegations filed against individuals are unclear in specifying the acts deemed contempt of Court. As a result, such offences have been used rather to restrict freedom of expression.⁵⁷

Mr Anon Numpa, for example, was charged with insulting a court for allegedly publishing a Facebook post criticising a court verdict in the case where seven students were charged with contempt of Court and referring to a poem “The Great Judiciary”. A Pheu Thai politician Mr Watana Muangsook was charged with the same offence for his Facebook post, which criticised the NCPO and the administration in the rice-pledging scheme case of the Supreme Court’s Criminal Division for Holders of Political Positions.

Watana is also facing two other contempt of Court cases: one for his live video on Facebook at the Bangkok Criminal Court and the other for his interview to the press in front of the Court. The Provincial Khon Kaen Court also directly pressed charges against the seven students who peacefully gathered and carried out activities in front of the Court sign located outside of the Court area to give moral support to the jailed student activist “Pai Dao Din”. The Supreme Court also sentenced Ms Sudsa-nguan Suthisorn, a lecturer at Thammasat University, to one month’s imprisonment for participating in the Red Shirt’s event of placing a wreath in

front of the Bangkok Civil Court to protest against the Court’s decision barring the use of the Emergency Decree on the People’s Democratic Reform Committee (PCRD)’s mob.

• Other legislation

In addition to the above provisions, the NCPO has resorted to other offences in its attempt to restrict the right to freedom of expression. Some are minor offences, such as the Public Cleanliness Act 2007, the use of a speaker in public without permission under the Advertising Control Act 1950, and secret society and criminal association offences under Articles 209 and 210 of the Penal Code – which were used to press charges against an individual who posted a letter criticising the then draft Constitution in northern province Chiang Mai or registering a political party named the Democratic Revolutionary Front Party.

An important instrument to restrict freedom of expression also was enforced during the run-up to the Constitutional Referendum in August 2016: the Constitutional Referendum Act 2016. The military pressed charges under Article 61(2) of the Act against a number of activists and individuals who had campaigned for a Vote-No for the referendum or expressed opposition against the then draft constitution. In spite of the Court dismissing many cases,⁵⁸ the enforcement of this law represents the

57 See TLHR (29 June 2017) “ขอบเขตการกระทำที่เป็นการละเมิดอำนาจศาล: มองกฎหมายต่างประเทศแล้วย้อนดูไทย” <http://www.tlhr2014.com/th/?p=4552> and TLHR (11 January 2018) “10 เรื่องควรรู้ว่าด้วยข้อหา “ดูหมิ่นศาล”” <http://www.tlhr2014.com/th/?p=5947>

58 Such as, the case of Mr Samart who put up a Vote-No leaflet in Chiang Mai, the case of five activists and journalists who were in possession of Vote-No stickers in Ratchaburi, the case of Pai and Wasin who handed out “7 Reasons to Vote No the draft Constitution” documents in Phu Khiao district, Chaiyaphum province, and the case of three activists tearing the voting ballot.

NCPO's attempt to restrict and suppress freedom of expression in relation to voting, instead of facilitating it. Till date, many referendum cases that include violating the Head of the NCPO Orders or sedition-like offence under Article 116 of the Penal Code have been prolonged, including the case of a letter criticising the then draft constitution, the Talk for Freedom case, and the Bang Pli district leaflet handout case— although the referendum won approval in August 2016 and the 2017 Constitution was promulgated.⁵⁹

Another type of legal action, not in relation to freedom of expression, was used to restrict the right to a fair trial by the NCPO. That is in weapons-related offences under the Firearm, Ammunition, Explosives Devices, Firecrackers, and Artificial Weapons Act 1947. NCPO Announcement No. 50/2014 sets out that the Military Court has the jurisdiction over cases relating to weapon offences. At present, 91.9 per cent of civilian cases of weapons-related cases pending at the Military Court are non- political or non-violence related. The majority of suspects does not have connections to political expression or incitement, but are simply accused of being in possession of unlicensed firearms. Some of them have been charged in relation to other cases, including narcotics and trespassing cases, where police officers happened upon firearms in their possession. The practice has brought them too under the Military

Court's jurisdiction.⁶⁰

- **Consequences of the use of “legal process” by the NCPO**

The use of “legal process” and the “justice system” were part of the NCPO's project to restrict public political expression. These legal proceedings have put an extensive burden on the suspects and defendants: financial cost, mental impact and waste of time. Most of the cases tried in the Military Court are delayed and take a long time to conclude, given the scheduling of witness examination every two or three months, which prolongs the whole proceedings, as opposed to the Court of Justice's practice to consecutively examine all witnesses. At present, many cases brought right after the 2014 coup have to date only reached the point of having examined a few witnesses and are likely to take years to reach a verdict.

The prosecution itself also results in “political prisoners” detained, convicted and imprisoned. This is especially true in lese-majeste cases where the Court usually denies a request for provisional release, and weapons-related cases where some suspects were accused of political motives. “Political prisoners” coming in and out of prison therefore become a normal part of events that Thai society has seen over the last four years. Prisoners and detainees also experience limitations of their rights and freedoms, together with sub-standard living conditions inside the premises of

59 See TLHR (7 April 2017) “รัฐธรรมนูญใหม่ประกาศใช้ แต่ “ผู้ต้องหาประชามติ” กว่า 104 ราย ยังถูกดำเนินคดี” <http://www.tlhr2014.com/th/?p=3924>

60 See TLHR (26 April 2017) “ส่องดูหลากหลาย “คดีอาวุธ” ในศาลทหาร: ปืนแก๊ป ปืนโบราณ จับทำไม้แต่พบปืน ครอบครองระเบิดหวังฆ่าตัวตาย” <http://www.tlhr2014.com/th/?p=4116>

detention.⁶¹

Cases of violation of the NCPO summons, lese-majeste offence, and weapons-related charges have also led to at least 86 people becoming political exiles spread out in some countries in Southeast Asia, Europe and the United States. Before fleeing, some individuals were aware that an arrest warrant with lese-majeste charge against them had been issued, while many were unsure whether such a warrant was processed or not but were concerned about the likelihood of arrest. Ongoing political prosecutions and the reality of political exiles and political prisoners will persist even after the NCPO steps down and a general election is held. ✎

61 See a report of the International Federation for Human Rights (FIDH) "BEHIND THE WALLS :A look at conditions in Thailand's prisons after the coup" (2017) https://www.fidh.org/IMG/pdf/rapport_thailand_688a_web.pdf and see TLHR (19 September 2016) "เรือนจำกับการปิดล้อมสิทธิของผู้ต้องขังในการได้พบญาติและทนายความ" <http://www.tlhr2014.com/th/?p=2112>

Summary and recommendations to the consequences of the 2014 coup

Given the above overview of the NCPO's activities in politics, the legal system, and the human rights situation, Thai Lawyers for Human Rights has developed recommendations to address the consequences of the coup. We aim to prevent the NCPO's creations from being institutionalized and enforced in forms that contradict democratic norms. That Thailand restores the ordinary legal system without military guidance and directly protects individual rights and freedoms is critical. Remedies and reparation must also be provided for persons affected by the regime, while perpetrators of human rights violations must be held accountable.

1. Separation of the military and popular sovereignty

The consequences of the militarization of civil administration and the interference with sovereignty in governing institutions must be addressed and limited. The role of the military must be separated from the exercise of

sovereign power, which belongs to the people. Military officials must cease all presence in positions and operations relating to executive and legislative powers, as well as in existing committees. Free and fair elections must be held as soon as possible. Article 269 of the 2017 Constitution, which grants power to the NCPO to appoint 250 senators through the Election Commission's nomination must be amended.

Furthermore, an elected government must promptly set up mechanisms to ensure remedies and reparation to individuals who have been affected by the seizure and exercise of sovereign power by the military. All personnel involved in staging the coup must be tried in a fair, impartial tribunal. A new regime where people and government agencies can review and control the military must be established. Such a regime could begin with a reform of the security mindset, to replace it with the protection of individual rights and freedoms. All data, purposes and types of information that the military

has documented on individuals after the 2014 coup must be made public.

2. Managing legal creations of the NCPO

TLHR recommends a review of all legislation issued by the NCPO or NCPO-established institutions, in order to restore a situation where legal mechanisms are set in place to guarantee the protection of individual rights and freedoms under the rule of law as well as to effect checks and balances by people and the judicial institution. Legislation issued during this period can be identified as falling into two categories.

- **Category 1 Legislation issued by unlawful structure or means**

This category includes instruments that a group of individuals whose authority is not based on the use of popular legislative power issued, including the Constitution, the NCPO announcements and orders, and the Head of the NCPO orders. An individual or a group of individuals must review all instruments falling into this category, be they in the form of a committee, a political party, a government agency or an independent agency, so as to confirm public participation in the process of enactment.

The 2017 Constitution

After an impartial, independent review, some provisions in the Constitution must promptly be amended, including a repeal of Articles 265 and 279, which guarantee and endorse the coup's legitimacy under Articles 44, 47 and 48 of the interim Constitution 2014. Article 255, which outlines the stringent conditions to amending the 2017 Constitution must be reviewed and amended immediately, so

that individuals can collect signatories to propose a draft to repeal or amend provisions in the 2017 Constitution, as a part of remedies and reparation given the absence of independence and impartiality during the Constitutional Referendum 2017.

The NCPO announcements and orders and the Head of the NCPO orders

TLHR recommends that all announcements and orders issued by the NCPO or Head of the NCPO giving rise to gross human rights violations must be repealed immediately. This includes NCPO announcements Nos. 37/2014 and 38/2014, under which certain offences are tried under the Military Court's jurisdiction, NCPO Announcement No. 51/2014, which bans political gatherings or assemblies of five or more persons, and the Head of the NCPO Orders Nos. 3/2015 and 13/2016, which grant military officials power to infringe on individual rights and freedoms.

Legislation issued by the National Legislative Assembly

Since the passage of law through the NLA lacks direct and indirect public participation, TLHR recommends that acts that restrict individual rights and freedoms must be immediately reviewed in terms of their purposes and content, as well as their essences and implications, including the Public Assembly Act 2015 and the National Strategic Plan Act 2017. Furthermore, the National Reform Plans and Procedures Act 2017 enacted to restrict the exercise of the right to self-determination and the rights to participate in public administration, which in effect limits other rights and freedoms, must also be reviewed.

- **Category 2 Legislation enforced under unlawful processes**

Pre-existing criminal provisions were broadly interpreted and intensely enforced by the NCPO, inconsistent with the rationale of the law and used as political tools to persecute individuals who expressed dissenting opinions or criticisms of the regime– including lese-majeste offences under Article 112 of the Penal Code, sedition-like offences under Article 116 of the Penal Code, computer-related offences under the Computer Crime Act 2007 (especially Article 14), contempt of Court offences under Articles 30 - 33 of the Civil Procedures Code and under Article 198 of the Penal Code, among others.

TLHR recommends a review of the legal elements and criminal penalty of these provisions, because they are legislation used to restrict the freedom of expression and peaceful assembly. Amendments must be made in order to comply with human right standards and the principles of proportionality and necessity under democratic rule. Both categories of laws must be reviewed and their consequences considered on a case-by-case basis to ensure remedies in each case (see also item 4 below).

3. Reform the criminal justice system and use human rights legal standards in the Court to guarantee civil and political rights in judgements

A legal system set up by the NCPO has set standards in the Court of Justice and the Military Court's judgement in political cases. In order to reform the justice system, TLHR proposes a separation of the military and the

prosecution process.

- **Judicial reform of the Court**

Civilians must not be tried in the Military Court to ensure the impartiality and independence of the Court, the prosecutor and the inquiry officer. The accused must be guaranteed the right to a fair trial, particularly the right to obtain evidence, the right to provisional release, and the right to a public trial. For cases prosecuted during martial law where individuals could not appeal the Military Court's verdict at a higher tribunal, an elected parliament must issue a charter to allow such right and set in place mechanisms for financial and non-financial remedies.

The government should guarantee that the judiciary can act and people can exercise their sovereign power under democratic rule through checks and balances. In turn, the Court must be open to public scrutiny and criticism; the criminal penalties for contempt of Court offences under Articles 30-33 of the Civil Procedure Code and Articles 38-39 of the Constitutional Court Act on the Procedures of the Constitutional Court 2017 must be repealed.

- **Judicial reform of the prosecutor**

NCPO Announcement No. 115/2014 must also be repealed whereas it grants higher power to police officials than the prosecutor to issue a decision on cases. The prosecutor must not be interfered, by any direct or indirect control and supervision of the prosecutor's discretion, in making a decision on cases. Instead, the check and balance system must also be installed in the process of the prosecutor and the inquiry officer undertaking their

work. Furthermore, ongoing prosecutions that authorities use to suppress and harass individuals must be dismissed per the Penal Procedure Code and the Prosecutorial Agencies and Officials Act 2010. The government must also repeal the Head of the NCPO Order No. 51/2017, which grants power to the Internal Security Operations Command (ISOC) at regional and provincial levels to supervise the administration of public prosecutors in the justice process, and the defense of national security. NCPO Announcement No. 55/2016, which grants the ISOC power to oversee the administration of government officials in the justice system, must be repealed.

- **Judicial reform of the police**

Similar to the judicial reform of the prosecutor, the Head of the NCPO Order No. 7/2016 must be repealed, since it supervises police work in the justice system. A review system must be established to ensure the impartiality and independence of the inquiry officers from the military influence during the exercise of their discretion, especially where the accusers are members of or act in the capacity of the NCPO. Evidence gathered during detention and investigation by military officials under power granted by martial law, the NCPO announcements and orders, and the Head of the NCPO orders must also be inadmissible. All NCPO announcements and orders, and Head of the NCPO orders – which grant military officials power to act as the inquiry officer in cases charged with certain offences under the announcements and orders of the Criminal Procedure Code – must be repealed.

Moreover, TLHR recommends

that the Administrative Court and the Constitutional Court should be a good example for other courts by rendering judgements that affirm Thailand's human rights obligations, and should set precedents for the protection and promotion of civil and political rights through means of human rights-based strategic litigation.

4. Provide remedies and reparation for individuals who have been affected by the military use of power

For individuals, groups and communities who have been affected by the NCPO and the military use of power over the course of the last four years, TLHR recommends two mechanisms to provide remedies and reparation based on types of human right violations, as follows:

- **Type 1: Remedies for individuals whose rights have been violated but were not prosecuted**

This category includes: persons who were forced to sign an MOU in custody and consequently their rights were restricted, political exiles, and persons who have been followed, intimidated and detained by authorities whereby their rights to privacy and not to be arbitrarily detained were violated. TLHR recommends the government make public the data and statistics of mentioned individuals; document human rights violations based on international human rights standards, especially as per the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a State party, set in place complaint mechanisms, and accept suggestions made by affected individuals.

Furthermore, the government and

the NCPO must repeal all orders and legislation and cease all actions and operations that restrict or infringe on the right to freedom of movement, freedom of expression and freedom of peaceful assembly, and the power to financial and property management as a result of the unlawful use of power by the NCPO. All MOUs individuals were forced to sign during custody must be revoked, together with all travel bans. Seizure and forfeiture of assets and properties as a result of failure to report to the NCPO must be ceased and revoked. The right to a fair trial of political exiles in fear of prosecution, intimidation and harassment by the NCPO must be guaranteed.

- **Type 2: Remedies for individuals who face prosecution by authorities and the state**

This includes: persons prosecuted for a breach of the NCPO announcements and orders and Head of the NCPO orders, and persons prosecuted for politically motivated charges and criminal offences outlined in 2; and deemed a threat to national security. Recommendations are divided as per justice processes, as follows:

Finalized cases in the Court of Justice and the Military Court

The government must establish complaint mechanisms for persons who wish to have their cases reinvestigated. Furthermore, a law must be enacted for reinvestigation and retrial that also allows civilians and military officials tried under martial law to appeal the verdict of a Military Court at a Court of Justice. The government must also create a committee to review the legality of the whole prosecution, based on the due

process of law. Financial and non-financial remedies must be provided for prosecuted individuals and their families.

Pending cases at the Court of Justice or the Military Court

The government must make public the statistics of cases and persons being tried in both courts. The Court of Justice must guarantee the right to a fair trial of the defendants, affirming the right to provisional release prescribed in the Penal Procedure Code, the right to evidence and witness cross-examination, and the right to a legal counsel of their choice. Meanwhile, all cases under the Military Court's jurisdiction must be transferred to the Court of Justice.

Pending cases at the prosecutor or the police

The government must publish the statistics of cases and individuals, as well as review all prosecutions at the prosecutorial and police stages. TLHR urges the government to unconditionally and immediately end all cases and provide financial and non-financial remedies and reparation to affected individuals

5. All verdicts guaranteeing the success of the coup, granting the NCPO and government officials exemption from legal liability and based on legislation that violate human rights must be annulled

The consequences of the NCPO's legal outputs are prolonged by judgements of the judiciary, whereby, under the Thai legal system, these judgements affirm the legitimacy of all actions in relation to the coup. Furthermore, they set in place privilege for the NCPO and concerned officials to be exempt from legal liability,

effective since the coup onwards. Some judgements are the result of the Court's verdict on certain cases, affirming the legal status of enacting legislation that infringes on individual rights and freedoms.

TLHR proposes two sets of recommendations outlined by the effect of the verdicts: verdicts endorsing the success of the coup, and verdicts granting the NCPO and concerned officials exemption from legal liability and based on legislation that violates human rights.

- **Set 1 Verdicts endorsing the legality and success of the coup**

To abolish the legality and success of the coup, Supreme Verdict No. 3578/2017 on the case of Mr. Sombat Boonngamanong, which ruled that the NCPO as the sovereign authority without the royal endorsement necessary to affirm such status, must be immediately annulled. Such annulment would set precedents on the Court's conduct and principles of adjudication whereby the use of unlawful and unconstitutional power must be abolished.

- **Set 2 Verdicts granting the NCPO and concerned officials exemption from legal liability based on legislation that violates human rights**

Firstly, legislation that grants the NCPO and concerned officials exemption from legal liability– including Articles 44, 47 and 48 of the interim Constitution 2014, and verdicts based on the NCPO announcements and orders and the Head of the NCPO orders issued by power under such articles– must be annulled. This is because they establish the practice of impunity through the

exemption of the NCPO and concerned officials' administration and enforcement of NCPO-issued legislation from the judicial review of any civil, criminal and administrative liabilities. Such impunity bars the NCPO and concerned officials from legal liability, and must consequently be annulled.

Secondly, a number of verdicts affirm the same legality and status of the NCPO's announcements and orders and the NLA's legislation as legislation passed by an elected parliament during the ordinary situation, and incorporate them in the justice system. Such verdicts were used as the basis of judgements to punish individuals and restrict their rights and freedoms guaranteed under the democratic rule. These court verdicts and orders are incorporated into the offences and penalties of the NCPO announcements and orders and Head of the NCPO orders, which criminalize individuals who refused to report to NCPO summons, the NCPO Announcement No. 7/2014, Head of the NCPO Order No. 3/2015, Public Assembly Act 2015, and Constitutional Referendum Act 2016– all of which were interpreted on the non-protection basis of individual rights and, as a result, restricted individual rights and freedoms guaranteed under the interim Constitution 2014 and the 2017 Constitution. Such verdicts and orders must be immediately annulled. ✎

