



International
Commission
of Jurists



**JOINT SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS AND
THAI LAWYERS FOR HUMAN RIGHTS
IN VIEW OF THE PREPARATION BY THE UN HUMAN RIGHTS COMMITTEE OF
A LIST OF ISSUES FOR THE EXAMINATION OF THE SECOND PERIODIC REPORT
OF THE KINGDOM OF THAILAND UNDER ARTICLE 40 OF
THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

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

Thai Lawyers for Human Rights (TLHR), a coalition of human rights lawyers and defenders, formed immediately following the May 2014 coup d'état in Thailand. The collective's aim has since been to raise awareness about human rights violations resulting from the imposition of martial law and military rule in the country. The organization runs a 24-hour hotline and uses the information gathered to disseminate public awareness and advice for those summoned or arrested. TLHR provides free litigation and legal assistance for vulnerable people whose rights have been affected by martial law and who do not have legal representatives.

Submitted on 8 April 2016

Joint Submission of the International Commission of Jurists and Thai Lawyers for Human Rights in view of the preparation by the UN Human Rights Committee of a List of Issues for the examination of the Second Periodic Report of the Kingdom of Thailand under Article 40 of the International Covenant on Civil and Political Rights

1. During its 119th Session, the exact dates of which have yet to be confirmed but which is expected take place in March 2017, the Human Rights Committee ('the Committee') will undertake its review of the implementation of the International Covenant on Civil and Political Rights ('the Covenant') by the Kingdom of Thailand ('Thailand'), including by examining Thailand's second periodic report under Article 40 of the Covenant.
2. Ahead of this, during its 117th session, from 20 June to 15 July 2016, the Committee will prepare and adopt a List of Issues to assist in its eventual review of Thailand's implementation of and compliance with the provisions of the Covenant. In this context, the International Commission of Jurists (ICJ) and Thai Lawyers for Human Rights (TLHR) welcome the opportunity to contribute to the Committee's preparation of its List of Issues on Thailand.
3. In the present submission, the ICJ and TLHR draw the Committee's attention to the following issues, which give rise to concern, particularly, in relation to Thailand's compliance with its obligations under Articles 2, 4, 6, 7, 9, 14, 19 and 21 of the Covenant:
 - Thailand's derogation under Article 4 of the Covenant;
 - Torture and other ill-treatment, enforced disappearances and custodial deaths in disputed circumstances;
 - Thailand's new institutional and legal framework since the *coup d'état*, which severely restricts the exercise of Covenant rights within the country and in particular the recent introduction of the National Council for Peace and Order's (NCPO) Head Order 13/2016, which grants members of the military wide-ranging law enforcement powers to "prevent and suppress" 27 "crimes", together with blanket immunity from prosecution.¹
4. In respect of each issue highlighted in the present submission, the ICJ and TLHR formulate suggestions for questions that the Committee may wish to incorporate in its List of Issues on Thailand.

Derogation from the Covenant made under Article 4 – Articles 12 (1), 14 (5), 19 and 21

5. On 20 May 2014, two days before the *coup*, the military imposed nationwide martial law.² Thailand's martial law provides the military with superior powers placing it over civil authorities. In this context, for example, pursuant to martial law, the military has the power to administratively detain individuals, without charge, for up to seven days before bringing them before a court thereby violating

¹ Thailand: Human rights groups condemn NCPO Order 13/2016 and urge for it to be revoked immediately, ICJ, Amnesty International, Human Rights Watch, FORUM-ASIA, International Federation for Human Rights, and Fortify Rights: <http://www.icj.org/thailand-human-rights-groups-condemn-ncpo-order-132016-and-urge-for-it-to-be-revoked-immediately/>.

² Thailand: authorities must revoke Martial Law, restore media freedom, ICJ: <http://www.icj.org/thailand-authorities-must-revoke-martial-law-restore-media-freedom/>.

the right to liberty and security of person under Article 9 of the Covenant in respect of one's right to prompt access to a judicial authority to review the lawfulness of detention (see paragraph 32, below).

6. On 8 July 2014, Thailand stated that it would derogate under Article 4(1) of the Covenant in respect of the following rights:³
 - a. article 12(1), (liberty of movement);
 - b. article 14(5) (right to have a conviction and sentence reviewed by a higher tribunal);
 - c. article 19 (freedom of opinion and expression); and
 - d. article 21 (freedom of peaceful assembly).
7. On 1 April 2015, nearly a year after imposing martial law nationwide, the Thai military, using the name the National Council for Peace Order, lifted martial law from most provinces in Thailand. However, martial law remains in place in those areas where it was already imposed prior to 20 May 2014.⁴ Notwithstanding the fact that martial law was lifted from most provinces, the above-mentioned derogation from the foregoing provisions of the Covenant remained in place at the time of writing.
8. In its General Comment No 29, the Committee stated that, "measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature."⁵ In the same General Comment, the Committee went on to state that, "a fundamental requirement for any measures derogating from the Covenant, as set forth in article 4, paragraph 1, is that such measures are limited to the extent strictly required by the exigencies of the situation [...] and [must reflect] the principle of proportionality".⁶
9. In light of the above, the ICJ and TLHR recommend that the following questions be included in the List of Issues for the examination of Thailand:
 - ***Please clarify whether there is a timeline on when Thailand plans to withdraw its derogation under paragraph 1 of Article 4 of the Covenant.***
 - ***Please clarify how the derogating measures taken are strictly required by the exigencies of the situation and in which way they reflect the principle of proportionality.***

³ For the full text of Thailand's 8 July 2014 derogation, see https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec. The text derogation refers to derogating "specifically in Article 12 (1), by the announcement of a curfew which was lifted on 13 June 2014; Article 14 (5), only where a jurisdiction has been conferred to the Martial Court over Sections 107-112 of the Penal Code and the offences against the internal security of the Kingdom; Article 19, by the prohibition of broadcasting or publishing certain content, particularly those inciting conflict and alienation in the society, false or provoking messages, and Article 21, by the limitation of political gathering. These restrictions are under constant review and are progressively lifted."

⁴ Before the coup in May 2014, Martial law was already in force in at least 30 of Thailand's 77 provinces, including most of the provinces along Thailand's border with Myanmar, Lao PDR, Cambodia and Malaysia. The southern border provinces (SBP) of Pattani, Yala and Narathiwat have a well-documented history of human rights violations.

⁵ Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001) at para. 2.

⁶ Ibid at para. 4.

Torture and other ill-treatment, enforced disappearances and custodial deaths in disputed circumstances - Articles 6, 7 and 9 alone and taken together with Article 2(3)

10. Many credible allegations of torture and other ill-treatment, cases disclosing evidence of enforced disappearances and instances of custodial deaths in disputed circumstances in Thailand, implicating the police and the military, have not been investigated in a prompt, impartial and effective manner. In other cases raising similar allegations, while compensation is sometimes awarded, the alleged perpetrators are not brought to justice, thereby perpetuating impunity.⁷
11. One example is the case of Kritsuda Khunesen. On the evening of 28 May 2014, Khunesen, an active member of the United Front for Democracy against Dictatorship, the "Red Shirts", was taken from her house during a nighttime raid by the Military. The facts known to the ICJ and TLHR disclose evidence indicating that she was subjected to an enforced disappearance. Not until 20 June 2014 did the military admit that they had detained her; however, even then, they refused to disclose the place where she was being held. She was eventually released on 24 June 2014, 29 days after she had initially been disappeared. She alleged that she had been blindfolded and bound for the first seven days of her detention, and that she had been physically and sexually assaulted. At no point while in detention was she brought before a judicial authority or allowed to communicate with her family, a doctor, or lawyer. Thus far, there has been no substantive response from the Thai authorities about her case, let alone a prompt, independent, impartial and effective investigations into the above-mentioned allegations of egregious human rights violations, including enforced disappearance and torture and other ill-treatment as required by Articles 2(3), 7 and 9 of the Covenant.⁸
12. Another example of a suspected enforced disappearance is the case of Pholachi "Billy" Rakchongcharoen, a Karen minority human rights defender last seen on 17 April 2014 in the custody of Kaeng Krachan National Park Officials. Park officials admitted that they had detained Billy for "illegal possession of wild honey" but claimed that they had released him the same day.⁹ At the time of his "disappearance", he had been working with Karen villagers and activists on legal proceedings concerning the alleged burning of villagers' homes and property in the National Park in 2010 and 2011.

⁷ *SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS & THAI LAWYERS FOR HUMAN RIGHTS TO THE UNIVERSAL PERIODIC REVIEW OF THAILAND*, submitted on 21 September 2015 at para. 48 available at: <http://www.icj.org/icj-and-thai-lawyers-for-human-rights-submission-to-the-universal-periodic-review-upr-of-thailand/>.

⁸ See ICJ Submission to Committee Against Torture, ICJ. Available at: <http://www.icj.org/icj-submission-on-thailand-to-the-un-committee-against-torture/> and *Thailand: allegations of torture against activist Kritsuda Khunesen require immediate investigation*, ICJ. Available at <http://www.icj.org/thailand-allegations-of-torture-against-activist-kritsuda-khunesen-require-immediate-investigation/>.

⁹ *Thai authorities must urgently investigate Billy's 'disappearance'*. ICJ. <http://www.icj.org/thai-authorities-must-urgently-investigate-billys-disappearance/>; *Thailand: "Disappearance" of Billy demands special investigation*, ICJ. <http://www.icj.org/thailand-disappearance-of-billy-demands-special-investigation/>; *Thailand: enforced disappearances*, ICJ. <http://www.icj.org/thailand-enforced-disappearances/>; *Thailand: strengthen efforts to solve the apparent enforced disappearance of "Billy"*, <http://www.icj.org/thailand-strengthen-efforts-to-solve-the-apparent-enforced-disappearance-of-billy/>.

13. Following a six-day *habeas corpus* inquiry, the Court of First Instance, on 17 July 2014, concluded that it could not be established that Billy was still in detention when he had disappeared. Subsequent appeals of this decision to the Appeal and Supreme Courts have also failed to shed any light on Billy's fate or whereabouts.¹⁰
14. On 6 August 2015, Billy's wife requested the DSI to open a special investigation into the case due to the lack of progress in the police investigation.¹¹ To date, the DSI has failed to open such an investigation.
15. Another two examples giving rise to concern that Thailand appears to have failed to comply with its obligation under Articles 6 and 7 of the Covenant, taken alone and in conjunction with Article 2(3), to carry out a prompt, impartial and effective investigation into custodial deaths the circumstances of which are disputed are the deaths of Prakrom Warunprapa and Suriyan Sucharitpolwong at the Military detention facility at the Nakhon Chaisri Military base in Bangkok.
16. On the 8 September 2015, the Thai Ministry of Justice announced the creation of a detention facility inside the 11th Army Circle military base in Bangkok, the Nakhon Chaisri facility.¹² Since its establishment, two deaths have taken place within its walls. On 24 October 2015, it was reported that Prakrom Warunprapa had committed suicide while being held there.¹³ On 26 October, the Director General of the "Department of Corrections" [sic] announced there was no need to carry out an autopsy "because his family did not have any doubts about the death". His body was cremated on the same day. On 9 November, Justice Minister Paiboon Koomchaya announced that another detainee, Suriyan Sucharitpolwong, had died while detained at Nakhon Chaisri and that an autopsy performed on 8 November had found that he had died from "respiratory and blood circulation failures due to a blood infection".¹⁴ According to reports, his relatives collected his body on 8 November and cremated it the following day.¹⁵ Particularly troubling is the fact that both deceased's bodies appear to have been cremated before a full investigation into the cause of death that meets international standards could take place.
17. In a recent development, one of the accused in the Erawan Shrine bombing in Bangkok of 17 August 2015, Adem Karadag, who is also being held in Nakhon Chaisri pending trial, has recanted a previous confession and alleged that he had been tortured in the facility.¹⁶ Given this latest torture allegation and the two deaths in custody mentioned above, the ICJ and TLHR, among others, have called for the immediate transfer all non-military persons detained at the Facility to an officially recognized civilian place of detention.¹⁷

¹⁰ Supreme Court Case no.7237/2015, 9 July 2015, Pinnapa Prueksapan, petitioner

¹¹ Thailand: launch special investigation into enforced disappearance of "Billy", ICJ. <http://www.icj.org/thailand-launch-special-investigation-into-enforced-disappearance-of-billy/>.

¹² See ICJ and Human Rights Watch open letter to the Permanent Mission of Thailand: <http://www.icj.org/thailand-human-rights-watch-and-the-icj-express-concerns-over-detentions/>

¹³ <http://www.bangkokpost.com/news/crime/741808/lese-majeste-suspect-found-hanged>.

¹⁴ http://www.prachachat.net/news_detail.php?newsid=1447049544.

¹⁵ <http://breakingnews.nationtv.tv/home/read.php?newsid=772581> <http://hilight.kapook.com/view/128916>.

¹⁶ <http://www.bangkokpost.com/news/crime/864820/shrine-bombing-suspect-recants-confession-claims-torture>.

¹⁷ See ICJ and Human Rights Watch open letter to the Permanent Mission of Thailand: <http://www.icj.org/thailand-human-rights-watch-and-the-icj-express-concerns-over-detentions/>.

18. A report of the Thai civil society organization, Cross Cultural Foundation (CrCF) documented 54 allegations of torture in the Deep South of Thailand between 2004 and 2015, with 32 incidents allegedly taking place between 2014 and 2015.¹⁸
19. In its 2005 Concluding Observations on Thailand's first periodic report under the Covenant, the Committee recommended that "The State party should ensure that all alleged cases of torture, ill-treatment, disproportionate use of force by police and death in custody are fully and promptly investigated, that those found responsible are brought to justice, and that compensation is provided to the victims or their families."¹⁹
20. In its 2014 Concluding Observations on the initial report of Thailand under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture (CAT) noted serious concern "about the continued allegations of widespread torture and ill-treatment of detainees, including as a means of extracting confessions, by the military, the police and prison officials". It went on to recommend that the State Party "take immediate and effective measures to investigate all acts of torture and ill-treatment and to prosecute and punish those responsible with penalties that are commensurate with the gravity of their acts. In addition to those measures, the State party should unambiguously reaffirm the absolute prohibition of torture and publicly condemn all practices of torture, accompanied by a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law and will be subject to criminal prosecution and appropriate penalties."²⁰
21. The CAT also drew attention to the inadequate legal framework pertaining to Thailand's obligations under the Convention, noting its concern over the "absence of a definition of torture".²¹
22. Furthermore, the ICJ and TLHR note that in addition to constituting a crime under international law, enforced disappearances entail also the violation of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.²² As the cases mentioned above illustrate, credible allegations of enforced disappearances continue to emerge in Thailand; at the same time, despite the fact that the State Party has signed the International Convention for the Protection of All Persons from Enforced Disappearance, Thailand has thus far failed to adopt legal provisions defining and criminalizing enforced disappearance in domestic law. The ICJ and TLHR understand that a draft bill on enforced disappearance and torture is currently being debated in the Thai Cabinet, however, at the time of writing, it had not been passed.

¹⁸ <https://voicefromthais.files.wordpress.com/2016/02/e0b8a3e0b8b2e0b8a2e0b887e0b8b2e0b899e0b897e0b8a3e0b8a1e0b8b2e0b899e0b89be0b8b1e0b895e0b895e0b8b2e0b899e0b8b5-2557-2558-1.pdf>.

¹⁹ Concluding observations of the Human Rights Committee on Thailand, CCPR/CO/84/THA 8 July 2005, at para. 15.

²⁰ Concluding observations of the Committee against Torture on the initial report of Thailand, CAT/C/THA/CO/1, at para. 10.

²¹ ibid at para. 9.

²² Communication 540/1993, *Celis Laureano v. Peru* - views 25 March 1996, para. 8.5
Communication 542/1993, *Katombé L. Tshishimbi v. Zaire*, views 26 March 1996, para. 5.5
Communication 440/1990, *Youssef El-Megreisi v. the Libyan Arab Jamahiriya*, para. 5.4
Communication 449/1991 *Mojica v. Dominican Republic*, para. 5.7.

23. In its 2014 Concluding Observations on the initial report of Thailand, the CAT made a series of specific recommendations in order to combat impunity for the crime of enforced disappearance, including:

- a. Taking legal measures to ensure that enforced disappearance is a specific crime in Thai domestic law, with penalties that take into account the grave nature of such disappearances;
- b. Ensuring that all cases of enforced disappearance are thoroughly, promptly and effectively investigated, suspects are prosecuted and those found guilty are punished with sanctions proportionate to the gravity of their crimes, even when no body or human remains are found. The Committee reminds the State party that where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities are required to undertake an investigation, even if there has been no formal complaint;
- c. Ensuring that any individual who has suffered harm as the direct result of an enforced disappearance has access to information about the fate of the disappeared person as well as to fair and adequate compensation, including any necessary psychological, social and financial support. The Committee reminds the State party that, for the family members of a disappeared person, enforced disappearance may constitute a breach of the Convention;
- d. Adopting measures to clarify the outstanding cases of enforced disappearance and facilitating the request by the Working Group on Enforced or Involuntary Disappearances to visit the country (A/HRC/22/45, para. 471);
- e. Accelerating the process for ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.²³

24. In light of the above, the ICJ and TLHR recommend that the following questions and clarifications be included in the List of Issues for the examination of Thailand:

- ***Please provide information concerning the steps the State Party has taken, if any, to implement the above-mentioned recommendation featured in the Committee's 2005 Concluding Observations on Thailand concerning allegations of torture, ill-treatment, disproportionate use of force by police and death in custody;***
- ***Please detail whether the State Party has instigated independent investigations into credible allegations of torture or other ill-treatment of detainees? If so, please clarify whether those found to be responsible have been prosecuted and in cases of convictions, if any, please indicate what sanctions were imposed. In particular, please clarify whether the State Party has prosecuted any officials, including military officials, who have authorized such torture and other abuse;***
- ***Please detail what steps if any, the State Party has taken to adopt legislation explicitly prohibiting and criminalizing torture and enforced disappearance;***
- ***Please provide detailed information on the steps taken, if any, to implement the recommendations made by the CAT in 2014 to eliminate the crime of enforced disappearance in Thailand.***

²³ Concluding observations of the Committee against Torture on the initial report of Thailand, CAT/C/THA/CO/1, at para 14.

Arbitrary arrest and detention and Thailand's NCPO orders - Articles 2, 9 and 14

25. On 22 July 2014, the NCPO promulgated an Interim Constitution giving the head of the NCPO sweeping, unchecked powers, contravening rule of law and the separation of powers; human rights, including equality; and undermining accountability and the predictability of the law.²⁴
26. Article 44 of the Interim Constitution gives the head of the NCPO unfettered powers to introduce any order deemed necessary for "the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the Monarchy, national economics or administration of State affairs". As of March 2016, the NCPO has used Article 44 to issue over 50 orders, several of which have impacted negatively on the enjoyment of the right to liberty and security of person under Article 9 of the Covenant.
27. Article 47 of the Interim Constitution enshrines the legality and constitutionality of all NCPO orders and announcements, while Article 48 shields the NCPO from prosecution by declaring all acts of the NCPO in relation to the *coup*, as well as any acts of persons connected to the NCPO's acts, if the acts are illegal, "...all related persons shall be exempted from being offenders and shall be exempted from all accountabilities."²⁵
28. NCPO Head Order No. 3/2015, later augmented by Head Order No. 5/2015, gives appointed "peace and order maintenance officers" many of the same powers the military has under martial law, including to administratively detain people in military facilities for up to seven days without charge and carry out warrantless searches.²⁶
29. On 29 March 2016, the NCPO issued Head Order 13/2016²⁷, which grants extensive police powers to the military, including:
 - a. powers to arrest, detain and search (without warrants) suspects and hold them in places not officially recognized as places of detention for up to seven days, contrary to Article 14 of the Covenant;²⁸
 - b. granting a form of immunity from prosecution to those acting under the Order, leading to impunity contrary to the principle of accountability required by the rule of law, contrary Article 2 of the Covenant;
 - c. exempting actions taken under the Order from judicial review, contrary to the rights to effective remedy, to judicial control of deprivation of liberty, and to a fair trial, contrary to Articles 2, 9 and 14 of the Covenant;

²⁴ Thailand: interim Constitution seems to ignore key pillars of rule of law, ICJ:

<http://www.icj.org/thailand-interim-constitution-seems-to-ignore-key-pillars-of-rule-of-law/>.

²⁵ Please see unofficial translation available at:
<http://www.isranews.org/isranewsarticle/item/31533-translation.html>.

²⁶ Unofficial translation of Thai junta's order, replacing martial law with Section 44 of interim charter, Prachatai, Bangkok. <http://www.prachatai.com/english/node/4933>; Thailand: Lift martial law and return the country to civilian authority, ICJ. <http://www.icj.org/thailand-lift-martial-law-and-return-the-country-to-civilian-authority/>.

²⁷ For an unofficial translation, see: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2016/04/Thailand-NCPO-Order-unof-trsl-Advocacy-2016-ENG.pdf>

²⁸ Thailand: Human rights groups condemn NCPO Order 13/2016 and urge for it to be revoked immediately, ICJ, Human Rights Watch, Amnesty International, FORUM-ASIA, Fortify Rights and International Federation for Human Rights: <http://www.icj.org/thailand-human-rights-groups-condemn-ncpo-order-132016-and-urge-for-it-to-be-revoked-immediately/>.

- d. providing untrained military officials with broad and ambiguously worded powers of law enforcement likely to lead to abuse, inconsistent with human rights standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and
 - e. authorizing the deprivation of liberty of persons for up to seven days in unrecognized places of detention, without judicial oversight, which increases the risk of further human rights abuses, including torture and other ill-treatment and enforced disappearance contrary to Articles 7, 9 and 14 of the Covenant.
30. In its General Comment No 20, the Committee stated that: "To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends."²⁹
31. In its General Comment 35, the Committee noted that: "Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17)".³⁰ Furthermore, in the same General Comment, the Committee noted that, "any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power".³¹ The Committee went on to note that, "While the exact meaning of 'promptly' may vary depending on objective circumstances, delays should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances. Longer detention in the custody of law enforcement officials without judicial control unnecessarily increases the risk of ill-treatment."³²
32. The ICJ also recalls the fact that Article 9(4) of the Covenant enshrines the fundamental principle of *habeas corpus*. This position was reaffirmed in General Comment 35, where the Committee stated: "Paragraph 4 of article 9 [...] enshrines the principle of habeas corpus. [...] The right applies to all detention by official action or pursuant to official authorization, including detention in connection with criminal proceedings, military detention, security detention, counter-terrorism detention [...] and wholly groundless arrests".³³
33. In its 2005 Concluding Observations on Thailand, the Committee recommended that: "The State party should guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention. The arrested person should have an opportunity immediately to inform the family about the

²⁹ Human Rights Committee, General Comment 20, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994) at para. 11.

³⁰ Human Rights Committee, General Comment 35, CCPR/C/GC/35 at para. 17.

³¹ Ibid at para. 32.

³² Ibid at para. 33.

³³ Human Rights Committee, General Comment 35, CCPR/C/GC/35 at paras 39 and 40.

arrest and place of detention... Anyone arrested or detained on a criminal charge must be brought promptly before a judge.”³⁴

34. In view of the above, the ICJ and TLHR recommend that the following questions and clarifications be included in the List of Issues for the examination of Thailand:

- ***Please provide a detailed justification for the introduction of NCPO Head Order 13/2016 that gives broad police powers to members of the military.***
- ***Please indicate whether the newly designated “Prevention and Suppression Officers” will receive law enforcement training to ensure they do not abuse their new authority.***
- ***Please also provide an explanation for why under Head Order 13/2016, persons arrested by Prevention and Suppression Officers must be taken to places not officially recognized as places of detention and in doing so, how their Covenant rights (particularly under Articles 7 and 9) will be protected.***
- ***Given the guidance provided by the Committee on periods of detention before being brought before a judicial authority, please explain how the extension of the period of such detention under NCPO Head Order 3/2015 and 13/2016 to seven days is compatible with the provisions of the Covenant.***
- ***Please clarify whether persons detained pursuant to Head Order 13/2016 will retain the right of habeas corpus under Article 9 (4) of the Covenant.***
- ***In light of reports that human rights defenders have been specifically targeted under the new legal and institutional framework implemented since the military coup, please provide detailed information on measures taken by the State Party to ensure that all persons legitimately exercising their Covenant rights will not be arrested or detained.***
- ***Consistent with Thailand’s Covenant obligations, what steps has Thailand taken to repeal or amend the interim Constitution, including as a matter of priority articles 44, 47 and 48, and to take all necessary steps to ensure the reinstatement of a Constitution that protects and promotes human rights?***

Freedom of Expression and Thailand’s defamation laws - Articles 19 and 21

35. In its 2005 Concluding Observation on Thailand, the Committee recommended: “The State party should take adequate measures to prevent further erosion of freedom of expression, in particular, threats to and harassment of media personnel and journalists, and ensure that such cases are investigated promptly and that suitable action is taken against those responsible, regardless of rank or status.”³⁵

36. Since the military coup, the NCPO has used the new legal framework and pre-existing laws - including criminal defamation provisions, the sedition law, and the “crime” of *lèse majesté* - to punish human rights defenders and activists, giving rise to concern about violations of their rights to freedom of expression and assembly. According to the Thai civil society organization, Internet Law Reform Dialogue (iLaw), as of 28 February 2016, approximately 278 individuals have been arrested for exercising their freedoms of expression and assembly. However,

³⁴ Concluding observations of the Human Rights Committee on Thailand, CCPR/CO/84/THA, 8 July 2005, at para. 15.

³⁵ ibid at para. 18.

the total number nationwide is unknown, as the Government has not released official figures.³⁶

37. Numerous human rights defenders have faced criminal defamation lawsuits in Thailand, under articles 326 to 328 of the Thai Criminal Code. Criminal defamation under articles 326 and 327 carries a maximum sentence of one year's imprisonment while criminal defamation by "means of publication" under article 328 carries a sentence of up to two years' imprisonment. If the alleged defamation is perpetrated through a computer system, defendants are sometimes also charged under article 14 of the vaguely worded Computer Crimes Act, which carries a maximum sentence of five years' imprisonment. The ICJ has called for Thailand's criminal defamation laws to be repealed.³⁷
38. On 1 September 2015, a Court of First Instance in Phuket found that the Computer Crimes Act was not intended to cover allegations of defamation.³⁸
39. In its General Comment No 34, the Committee stated that the right to freedom of expression included the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. "It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse."³⁹
40. The Committee went on to further comment on the appropriateness and content of defamation laws, stating that: "Defamation laws must be crafted with care to ensure that they... do not serve, in practice, to stifle freedom of expression...At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence [...] States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others."⁴⁰
41. The ICJ and TLHR remain concerned about the chilling effect that the continued existence of and resort to criminal defamation laws have on the rights to freedom of opinion and expression in the country. In light of the above, the ICJ and TLHR recommend that the following questions be included in the List of Issues for the examination of Thailand:
 - **Please detail how freedom of expression is guaranteed in Thailand and how the legislative framework described above is consistent with the Covenant.**

³⁶ SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS & THAI LAWYERS FOR HUMAN RIGHTS TO THE UNIVERSAL PERIODIC REVIEW OF THAILAND, submitted on 21 September 2015 at para. 26.

³⁷ ibid at para. 27.

³⁸ Thailand: end prosecution of Phuketwan journalists and repeal criminal defamation law, ICJ: <http://www.icj.org/thailand-end-prosecution-of-phuketwan-journalists-and-repeal-criminal-defamation-laws/>.

³⁹ Human Rights Committee General Comment 34, CCPR/C/GC/34 at para. 11.

⁴⁰ Ibid at para 7

- Please provide detailed information, including the number of convictions, in connection with the enforcement of the criminal defamation provisions described above since their coming into force.
- Please provide details of investigations, arrests, detentions, trials and convictions pursuant to the above-mentioned criminal defamation provisions of human rights defenders and journalists and other cases that have been characterized as politically motivated criminal defamation suits.
- Please indicate the number of criminal proceedings brought during the period under review against human rights defenders and other civil society actors for defamation.
- Please indicate whether the State Party considers decriminalizing defamation by repealing articles 326 to 328 of the Thai Criminal Code.
- Please indicate what measures Thailand has taken to ensure that the Computer Crimes Act is not used to repress freedom of expression, particularly in cases of alleged defamation.

The right to a fair trial and the use of military courts in Thailand - Articles 9, 14, 19 and 21

42. Shortly after the coup, NCPO announcements 37/2014, 38/2014, and 50/2014 expanded the jurisdiction of military courts to certain offences,⁴¹ including purported violations of NCPO orders and the overly broad crime of *lèse majesté*. According to information the Judge Advocate General provided to TLHR, between 22 May 2014 and 30 September 2015, 1,408 cases (1,629 civilians, in total) have been tried in military courts located throughout Thailand - with 208 individuals in Bangkok alone.⁴²
43. In its General Comment No 32, the Committee has held that the trial of civilians in military courts raises "serious problems as far as the equitable, impartial, and independent administration of justice" is concerned.⁴³ According to international standards, Military courts lack the competence, independence, and impartiality to prosecute civilians and in principle should not be used except in strictly exceptional cases. Resorting to military jurisdiction should be limited to military matters or personnel.⁴⁴
44. At the 28th Session of the Human Rights Council in March 2015, Thailand claimed, "On the use of the Martial Court, only a limited number of cases of those who are accused of committing serious offences are submitted to the Martial Court."⁴⁵ However, some individuals have been prosecuted in military courts for merely exercising their rights to freedom of assembly and expression. For example, military courts have convicted peaceful protestors for "violations" of the NCPO order prohibiting the political gathering of more than five people and for acts such as holding up anti-coup signs outside a Bangkok shopping mall and in a McDonalds restaurant⁴⁶ in Chiang Rai.⁴⁷

⁴¹ Thailand: End prosecution of civilians in military tribunals, ICJ: <http://www.icj.org/thailand-end-prosecution-of-civilians-in-military-tribunals/> and Thailand: transfer all civilians to civilian courts, ICJ: <http://www.icj.org/thailand-transfer-all-civilians-to-civilian-courts/>.

⁴² <https://tlhr2014.wordpress.com/2015/11/page/3/>.

⁴³ Human Rights Committee General Committee No 32, CCPR/C/GC/32 at para 22

⁴⁴ ICJ welcomes UN expert report on military tribunals, ICJ. <http://www.icj.org/icj-welcomes-un-expert-report-on-military-tribunals/> and Report of the Special Rapporteur on the independence of judges and lawyers, 7 June 2012. A/HRC/20/19.

⁴⁵ Right of Reply, Delegation of Thailand, 28th Session of the Human Rights Council, 25 March 2015.

⁴⁶ Military court finds 3 men guilty in peaceful protests against coup, Prachatai, Bangkok. <http://prachatai.org/english/node/4345>.

45. In light of the above, the ICJ and TLHR recommend that the following questions be included in the List of Issues for the examination of Thailand:

- ***Please outline what steps Thailand has taken to:***
 - ***end the prosecution of civilians in military courts;***
 - ***transfer all cases of civilians facing proceedings before military courts, to the jurisdiction of civilian courts;***
 - ***order a retrial in civilian courts for all civilians convicted of an offence in military courts and amend the martial law and the Military Court Act to prohibit the prosecution of civilians in military courts.***
- ***Please clarify how the State Party ensures that trials before military courts comply with the fair trial guarantees enshrined in Article 14 of the Covenant.***

⁴⁷ For more information of the case please see: <http://freedom.ilaw.or.th/en/case/597>.