

# Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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## Lawyers' Rights Watch Canada (LRWC) Submission to the Universal Periodic Review, (Second Cycle), 25<sup>th</sup> Session, April - May 2016

### Introduction

1. Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers who promote human rights and the rule of law through advocacy, education and research. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).
2. This submission outlines concerns about Thailand's failure to comply with its international human rights obligations to guarantee:
  - a. fair trial rights in accordance with the *Universal Declaration on of Human Rights* (UDHR),<sup>1</sup> the *International Covenant on Civil and Political Rights* (ICCPR)<sup>2</sup> ratified by Thailand in 1996;
  - b. protection of human rights defenders pursuant to the ICCPR and the *UN Declaration on Human Rights Defenders*;<sup>3</sup>
  - c. protection of the rights and duties of lawyers pursuant to the *UN Basic Principles on the Role of Lawyers*;<sup>4</sup>
  - d. freedom from torture and prohibited treatment pursuant to the UDHR, ICCPR and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT)<sup>5</sup> ratified by Thailand in 2007.

<sup>1</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 20 September 2015]

<sup>2</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 20 September 2015]

<sup>3</sup> UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms : resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html> [accessed 20 September 2015]

<sup>4</sup> United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, available at: <http://www.refworld.org/docid/3ddb9f034.html> [accessed 20 September 2015]

<sup>5</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at:

3. This submission highlights concerns about and makes recommendations for ending judicial harassment of lawyers and human rights defenders by Military Courts and through national legislation.<sup>6</sup>

### **Judicial harassment of lawyers and human rights defenders in Military Courts**

4. At least 700 civilians including a number of human rights defenders,<sup>7</sup> pro-democracy activists,<sup>8</sup> academics<sup>9</sup> and at least one lawyer<sup>10</sup> have faced proceedings by Military Courts<sup>11</sup>

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<http://www.refworld.org/docid/3ae6b3a94.html> [accessed 20 September 2015]

<sup>6</sup>United Nations High Commissioner for Human Rights, “Who is a defender?” available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>

<sup>7</sup>For example, **14 members of the student New Democracy Movement (NDM)** may face prison terms up to seven years after being charged with sedition for twelve days by a military court for exercising their right to dissent and for participating in several peaceful, symbolic protests to mark the anniversary of Thailand’s 22 May 2014 military coup. The 14 are charged with violating Order No. 3/2015 of the Head of National Council for Peace and Order (NCPO), which bans political gatherings of more than five persons, and under Article 116 of the *Criminal Code* for inciting public unrest (sedition). On 6 July 2015, human rights defender, **Mr. Baramee Chairat**, coordinator of Thailand’s Assembly of the Poor and a member of the board of Amnesty International Thailand, was formally accused of sedition under *Criminal Code* Article 116 for showing support for the 14 activists at a demonstration at Democracy Monument on 25 June 2015. For detail, see *Thailand: Judicial harassment of human rights defenders and democracy activists; harassment of human rights lawyers and advocates: Fourteen students charged with sedition after symbolic anti-coup demonstrations*. Statement: Timeline, Analysis and Recommendations, LRWC, 8 July 2015, available at <http://www.lrwc.org/ws/wp-content/uploads/2015/07/Statement-Dao-Din-July-8-2015.pdf>. Also see Thai Lawyers for Human Rights, “Arrest of one of the 14 students of New Democracy Movement (NDM),” 16 August 2015, available at <https://tlhr2014.wordpress.com/2015/08/16/arrest-of-one-of-the-14-students-of-ndm/>. In June, 2014, labour rights leader and political activist, **Ms. Jittra Cotshadet**, was arrested for failing to report to the NCPO pursuant to a 1 June 2014, summons to report to army headquarters. Ms. Jittra was travelling outside Thailand at the time of the summons and on 3 June 2014 reported to Thailand’s embassy in Sweden. On 9 June 2014, the Military Court authorized a warrant for her arrest, and she was detained at the airport on her return to Thailand on 13 June 2014. The Military Court released her on bail and ordered her not to involve herself in political gatherings or express any political opinions. Her trial hearing dates have been 12 May 2015, 17 July 2015 and upcoming on 8 October 2015. See “Jittra insists trial in military court wrongful,” *Bangkok Post*, 13 May 2015, available at <http://www.bangkokpost.com/news/general/559731/jittra-insists-trial-in-military-court-wrongful> ILAW data base, <http://freedom.ilaw.or.th/en/event?month=10&year=2015>

<sup>8</sup>For example, on 23 February 2015, two student theatre activists, **Mr. Patiwat Saraiyaem**, 23 and **Ms. Pornthip Munkong**, 26, were convicted by a Military Court of violating Thailand’s lèse-majesté law after they participated in staging a one-hour play, “Wolf Bride,” about a fictional monarch and his corrupt advisors, at Thammasat University in October 2013. Even though the play was staged prior to the coup, the two students were tried in Military Court instead of a civilian court. In February 2015, they were each sentenced to two and half years in prison. Their sentences were halved because they had pleaded guilty. They had both been denied bail on at least five occasions and were incarcerated for more than six months prior to conviction. “Thailand: Freedom of expression stifled again under the draconian Lèse Majesté Law,” Forum-Asia, 23 February 2015, available at <https://www.forum-asia.org/?p=18371>; “Thailand lese majeste convictions assault on freedom,” Amnesty International, 23 February 2015, available at <https://www.amnesty.org/en/latest/news/2015/02/thailand-lese-majeste-convictions-assault-on-freedom/>. Political activist and human rights defender, **Mr. Sombat Boonngamanong**, has been charged by the Military Courts with several offences including violation of Article 116 of the Penal Code for organizing symbolic actions against the coup and failing to obey a military summons and violating Article 112 of the *Penal Code* (*lèse majesté*)

since Thailand's May 2014 military coup.<sup>12</sup> Many charges are based on the exercise of freedoms of expression, association and assembly guaranteed by the ICCPR, including:

- a. allegations of violating Section 112 (lèse majesté);<sup>13</sup>
- b. participating in symbolic political demonstrations, posting social media messages or scattering leaflets opposing the National Council for Peace and Order (NCPO) government;
- c. refusing to obey military orders to report to the NCPO for "attitude adjustment."

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and the *Computer Crime Act* Article 14(3)(5) for allegedly sharing a satirical political image on Facebook on 4 July 2014. See Thai Lawyers for Human Rights, August 2015: Hearing schedule of four cases represented by Thai Lawyers for Human Rights (TLHR), press release (in possession of LRWC). ; see "Lèse majesté indictment involving prominent red shirt figure postponed," *Prachatai*, 27 August 2015, available at <http://www.prachatai.com/english/node/54>

<sup>9</sup>For example, **Dr. Worachet Pakeerut**, Associate Professor, Faculty of Law, Thammasat University, and member of the Nitirat Group (Enlightened Jurists) of law scholars at Thammasat University who criticized the legality of Thailand's 2006 coup d'état and who have campaigned for amendment of the lèse majesté law to bring it into conformity with human rights law, was summoned on 23 May 2014 by means of a list of names broadcast on radio and television to present himself to the NCPO on 24 May 2014 and again on 10 June 2014 Order No. 57/2557. See "Thailand: Human rights defender and law professor charged by the junta," Asian Human Rights Commission, 18 June 2014, available at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-121-2014>. On 11 June 2014, Dr. Worachet's wife reported to the NCPO on his behalf, saying that he was sick and could not report to the military himself. On 16 June 2014, Dr. Worachet reported in person to the NCPO where he was taken into military custody. On 18 June 2014, he was taken to the Crime Suppression Division for further investigation, and on the afternoon of 18 June, he was taken to Bangkok Military Court and formally charged with violating an order of the NCPO. He was released on bail later that day. See ILAW data base, <http://freedom.ilaw.or.th/en/event?month=10&year=2015>

<sup>10</sup>**Mr. Anon Nampa** (aka Anon Numpa), human rights lawyer, and democracy activists **Sirawit Serithiwat**, **Pansak Srithep**, and **Wannakiet Chusuwan** were reportedly involved in a peaceful Valentine's Day 2015 protest in Bangkok that included a mock election and a call for revocation of martial law. The four were arrested on 14 February 2015 after for allegedly violating an order of the NCPO banning political gatherings of five persons or more (Announcement of the National Peace and Order Maintaining Council No. 7/2557 Subject: Prohibition of Political Assembling, available at <http://www.thaigov.go.th/en/announcement-2/item/83673-announcement-of-the-national-peace-and-order-maintaining-council-no-7/2557-subject-prohibition-of-political-assembling.html>). The four were detained and interrogated for nine hours before being released on bail. If found guilty, they face up to one year in prison and a fine of up to 20,000 baht (approximately US\$625). Since the complaints were made during the period of martial law, there will be no right of appeal from the Military Court's determination. If convicted under the an additional charge under the *Computer Crimes Act*, Mr. Anon faces up to 25 years imprisonment and a fine of up to 500,000 baht (approximately US\$15,625). The next hearing date is scheduled for 8 October 2015; ILAW data base, available at [http://freedom.ilaw.or.th/en/case/658#progress\\_of\\_case](http://freedom.ilaw.or.th/en/case/658#progress_of_case);

<sup>11</sup> For detail, see *Thailand: Judicial harassment of human rights defenders and democracy activists; harassment of human rights lawyers and advocates: Fourteen students charged with sedition after symbolic anti-coup demonstrations*. Statement: Timeline, Analysis and Recommendations, LRWC, 8 July 2015, available at <http://www.lrwc.org/ws/wp-content/uploads/2015/07/Statement-Dao-Din-July-8-2015.pdf>;

<sup>12</sup> Announcement of the NCPO No. 37/2557 [2014]: Offences Under the Power of the Military Court to Examine and Decide, 25 May 2014, <http://www.thaigov.go.th/en/announcement-2/item/83706-id83706.html>; International Commission of Jurists (ICJ), Submission to the UN Committee on Economic, Social and Cultural Rights, 11 May 2015, available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2015/05/Thailand-ICJ-CESCR-submission-Advocacy-non-legal-submission-2015-ENG.pdf>

<sup>13</sup> *Criminal Code*, Section 112 criminalizes criticism of the King, Queen, Crown Prince, and Regent but has been interpreted to ban criticism of royal projects or the royal institution, even previous or deceased monarchs. The number of lèse majesté cases, primarily against political activists, has increased dramatically since the coup. The NCPO has even sought extradition of thirty-one lèse majesté suspects living in other countries on the grounds that the crime is not a political crime but is related to national security. "Govt eyes extradition of lese majeste suspects," *The Nation*, 21 March 2015, available at <http://www.nationmultimedia.com/politics/Govt-eyes-extradition-of-lese-majeste-suspects-30256466.html>

5. After the May 2014 declaration pursuant to the *Martial Law Act (1914)*,<sup>14</sup> Military Courts assumed jurisdiction over civilians and fail to provide fair trial rights guaranteed by Article 14 of the ICCPR.
6. Military Courts lack independence and impartiality and competence, required by *ICCPR* Article 14 (1).
7. Thailand's Military Courts are a unit of the Ministry of Defense, and Military Court judges are appointed by and remain under the orders of military commanders.<sup>15</sup> In February 2015, Thai Lawyers for Human Rights (TLHR) reported "asking the Bangkok Military Court to refer the question of the impartiality of the judges to the Constitutional Court for consideration, but the military judges ordered the attorneys to change their request on the basis that it constituted a 'violation against the NCPO.'<sup>16</sup> This demonstrates lack of independence of Military Courts from the NCPO.
8. Military Court panels have three judges, only one of which must have legal training; the other two are military officials with no required legal training.<sup>17</sup> All civilian court judges have legal training. Military Court judges lack the competence of civilian court judges.
9. There is no appeal from Military Court convictions for during the period of martial law between 20 May 2014 and 1 April 2015.<sup>18</sup> The revocation of martial law on 1 April 2015 means normal appeal provisions of the *Military Court Act* of 1955 apply to charges laid after that date.<sup>19</sup> However, such appeals are heard by a Military Court, not an independent and impartial civilian court. This violates the right to review of conviction and sentence by a higher tribunal guaranteed by ICCPR Article 14(5)(3).
10. ICCPR Article 14 guarantees the right of everyone to a public hearing. Thailand civilian court hearings are normally public. Military Courts operate in a secret fashion. Even the

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<sup>14</sup> After the May 2014 declaration of martial law, Military Courts assumed jurisdiction over civilians pursuant to the *Martial Law Act*, B.E. 2457 (1914), English translation available at <http://www.thailawforum.com/laws/Martial%20Law.pdf> and NCPO Order 37/2557. For detail on the unlawfulness of the declaration of martial law, see "Thailand: Arbitrary Arrests and Incommunicado Detentions," 28 May 2014, available at <http://www.lrwc.org/thailand-arbitrary-arrests-and-incommunicado-detentions-letter/>. On 1 April 2015, the NCPO revoked martial law but replaced it with similar and expanded powers<sup>14</sup> retaining the Military Courts' jurisdiction over civilians in cases of lèse majesté, national security crimes, weapons offences and violations of NCPO orders. See NCPO Order Number 3/2558 (3/2015) on Maintaining Public Order and National Security, unofficial translation available at <http://www.prachatai.com/english/node/4933>. For more detail on international law on the right of civilians to trials in civilian courts, see LRWC, Thailand: Trials of civilians in military courts violates international fair trial rights: Judicial harassment of lawyers and human rights defenders. Statement, 25 May 2015, available at <http://www.lrwc.org/ws/wp-content/uploads/2015/05/Thailand-LRWC-Statement-Military-Tribunals-25-May-20151.pdf>. For elaboration of the international law, also see Erika Chan et al, *Right to Trial by Civilian Courts: International Law on the Use of Military Tribunals to Determine the Rights of Civilians*. Working Paper. Vancouver: Lawyers' Rights Watch Canada, January 2015, available at <http://www.lrwc.org/?p=8776>

<sup>15</sup> TLHR, *Martial Law and the Military Court: Civil and Political Rights in Thailand (22 May 2014-15 January 2015)*, TLHR, 2 February 2015 [TLHR report January 2015], available at <http://humanrightsinasean.info/system/files/documents/TLHR%20report-Civilians%20in%20Military%20court.pdf>

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, at 4

<sup>19</sup> *Act on the Organization of Military Courts* (B.E. 2498), Article 61, Para 1.

number of cases heard in Military Courts has not been revealed.<sup>20</sup> TLHR reports that while some trials of civilians in the Military Courts are open to the public, in most *lèse majesté* cases persons not directly concerned with the case must vacate the room. Military Court judges have denied lawyers' requests to make copies of court orders to hold hearings in secret explaining that the order was already verbally made and understood in the court.<sup>21</sup>

11. The presumption of innocence guaranteed by the ICCPR is compromised in Military Courts. International law provides that an alleged offender must be granted pre-trial release except when evidence establishes a risk of flight, interference with evidence or recurrence of the offence(s) and there is no means of preventing the established risk(s) other than detention.<sup>22</sup> The Military Courts contravene this right by refusing bail as a general rule in *lèse majesté* cases. TLHR reports that Military Courts often claim when denying bail that "since Article 112 cases carry a heavy punishment, there is a flight risk." Heavy punishment is not a valid reason for denying pre-trial release, nor is it a valid reason to presume a flight risk.
12. Comparison of *lèse majesté* cases tried in civilian and military courts demonstrates that Military Courts are imposing harsher sentences than civilian courts.<sup>23</sup> In August 2015, Military Courts imposed a 30-year prison sentence on three counts of *lèse majesté* for insulting the monarchy on Facebook, and sentenced a man with a history of mental illness to five years in jail for *lèse-majesté*.<sup>24</sup> As of December 2014, the longest sentence provided by a civilian court was 15 years (5 years for each count).<sup>25</sup>
13. The UN Human Rights Committee (HR Committee) has concluded that "the jurisdiction of military tribunals is restricted to offences of a strictly military nature committed by military personnel"<sup>26</sup> and that military tribunals are prohibited from trying civilians except in extraordinary, objectively determined and narrowly defined circumstances such as cases where fair, independent and impartial civilian courts are unavailable.<sup>27</sup> States are also

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<sup>20</sup> TLHR report, *supra* note 18

<sup>21</sup> *Ibid.* Also see "Compare civilian and military courts when dealing with lese majeste cases," *Prachatai*, 3 December 2014, available at <http://www.prachatai.com/english/node/4554>

<sup>22</sup> Lois Leslie, *Pre-trial release and the right to be presumed innocent: A handbook on international law rights to pre-trial release* (Vancouver: LRWC, 2013, available at <http://www.lrwc.org/ws/wp-content/uploads/2013/04/Pre-trial-release-and-the-right-to-be-presumed-innocent.pdf>)

<sup>23</sup> "Compare civilian and military courts when dealing with lese majeste cases," *Prachatai*, 3 December 2014, available at <http://www.prachatai.com/english/node/4554>

<sup>24</sup> Man jailed for 30 years in Thailand for insulting the monarchy on Facebook, *Guardian*, 7 August 2015, available at <http://www.theguardian.com/world/2015/aug/07/man-jailed-for-30-years-in-thailand-for-insulting-the-monarchy-on-facebook>

<sup>25</sup> *Supra* note 23 and note 46. .

<sup>26</sup> Cited in Draft Principles Governing the Administration of Justice Through Military Tribunals, U.N. Doc. E/CN.4/2006/58 at 4 (2006), Report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux to the UN Commission on Human Rights in 2006 (*Decaux Principles*); available at: <http://www1.umn.edu/humanrts/instree/DecauxPrinciples.html>.  
Draft Principles Governing the Administration of Justice Through Military Tribunals, U.N. Doc. E/CN.4/2006/58 at 4 (2006), Report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux to the UN Commission on Human Rights in 2006 [*Decaux Principles*]; available at: <http://www1.umn.edu/humanrts/instree/DecauxPrinciples.html>.

<sup>27</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 13: Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, 13 April 1984, paragraph 4 [CCPR General Comment No. 13], available at: <http://www.refworld.org/docid/453883f90.html> [accessed 16 December 2014].

required to provide objective reasons why ordinary courts cannot be used.<sup>28</sup> NCPO has not provided valid reasons why civilian courts are not available to try civilians.<sup>29</sup> The HR Committee also commented that when a State tries civilians before military tribunals, it must offer due process standards required by ICCPR Article 14.

14. Principle 5 of the *Basic Principles on the Independence of the Judiciary*, endorsed by the UN General Assembly in 1985<sup>30</sup> states:

everyone has the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

15. The *Draft Basic Principles Governing the Administration of Justice through Military Tribunals (Decaux Principles)*,<sup>31</sup> affirmed in 2006 by the UN Commission on Human Rights state:

Military courts should, in principle, have no jurisdiction to try civilians. The State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts<sup>32</sup> and that no tribunals may be created that “displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”<sup>33</sup>

### **Incommunicado detention without charges: Allegations of torture and ill-treatment**

16. Since 20 May 2014, the NCPO has detained incommunicado approximately 900 civilians, including elected officials, political activists, academics, journalists, human rights defenders and lawyers, in secret, unofficial military prisons without charge and without access to lawyers or judicial review for periods ranging from hours to seven days<sup>34</sup> or more<sup>35</sup> in

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<sup>28</sup> *Ibid.*

<sup>29</sup> For more detail on international law related to civilians’ right to a trial in a civilian court, see LRWC, Thailand: Trials of civilians in military courts violates international fair trial rights: Judicial harassment of lawyers and human rights defenders. Statement, 25 May 2015, available at <http://www.lrwc.org/ws/wp-content/uploads/2015/05/Thailand-LRWC-Statement-Military-Tribunals-25-May-20151.pdf>. For elaboration of the international law, also see Erika Chan et al, *Right to Trial by Civilian Courts: International Law on the Use of Military Tribunals to Determine the Rights of Civilians*. Working Paper. Vancouver: Lawyers’ Rights Watch Canada, January 2015, available at <http://www.lrwc.org/?p=8776>.

<sup>30</sup> *Basic Principles on the Independence of the Judiciary*, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

<sup>31</sup> *Decaux Principles*, *supra* note 26.

<sup>32</sup> *Decaux Principles*, principle 5, para 20, *supra* note 26.

<sup>33</sup> *Decaux Principles*, principle 5, para 20, *supra* note 26.

<sup>34</sup> United States Department of State, Country Reports on Human Rights Practices for 2014 [Thailand](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236480#wrapper), released June 2015, available at

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236480#wrapper>

<sup>35</sup> For example, **Ms. Kritsuda Khunasan**, 27, a political activist with the United Front for Democracy against Dictatorship (UDD), was arrested on 28 May and held incommunicado in a secret location without access to lawyers or family members beyond the seven days allowed by the *Martial Law Act* in force at the time. Military officials refused to provide information as to her whereabouts to her family or to Thailand’s National Human Rights Commission. She was released on 24 June 2014 and made allegations of torture and ill-treatment. See, LRWC, Thailand: Arbitrary detention & enforced disappearance: LRWC calls for restoration of democratic rule & human rights protections, Statement, June 20, 2014, available at <http://www.lrwc.org/ws/wp->

violation of ICCPR, Article 9.<sup>36</sup> Two opposition politicians, Mr. Pichai Naripatapan and Mr. Karun Hosaku, and a human rights journalist, Mr. Pravit Rojanaphruk, were held incommunicado in secret locations from 13 to 15 September 2015 for “attitude adjustment.” Mr. Pravit reported being subjected to ill-treatment.<sup>37</sup> On 11 September 2015, Prime Minister General Prayut Chan-ocha threatened “attitude adjustment” detention for anyone criticizing his (unelected) military government.<sup>38</sup>

17. Incommunicado detention in irregular places of detention by the NCPO and its failure to provide detailed public lists of detained persons creates a heightened risk of torture and ill-treatment in violation of the CAT.<sup>39</sup>
18. In September 2014, TLHR identified 14 allegations of treatment that may amount to torture or ill-treatment of persons during interrogation during military detention, including complaints of kicking, punching, electrical shocks to genitals and threats of death or other abuse.<sup>40</sup>
19. Although CAT Article 12 requires prompt investigation of torture allegations as essential to preserve evidence; no independent and impartial investigations of these complaints has yet been made. Instead, on 23 March 2015, military authorities allegedly threatened to take “legal action” against those who spread such information.<sup>41</sup>
20. In March 2015, officials reportedly obstructed an investigation by the National Human Rights Commission<sup>42</sup> into allegations of that confessions had been coerced by beating,

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[content/uploads/2014/06/Thailand-Military-Coup.LRWC\\_Statement.20.June\\_2014.pdf](http://www.icj.org/thailand-allegations-of-torture-against-activist-kritsuda-khunasen-require-immediate-investigation/); International Commission of Jurists, “Thailand: allegations of torture against activist Kritsuda Khunasen require immediate investigation,” 4 August 2014, available at <http://www.icj.org/thailand-allegations-of-torture-against-activist-kritsuda-khunasen-require-immediate-investigation/>

<sup>36</sup> ICCPR Article 9 states:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

...

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

<sup>37</sup> “Thai Lawyers for Human Rights, Press Release on the Detention of Political Critics in Thailand, 14 September 2015, available at <https://tlhr2014.wordpress.com/2015/09/14/press-release-on-the-detention-of-political-critics-in-thailand/>; Veteran journalist Pravit says military ill-treated him during detention,” *Prachatai*, 17 September 2015, available at <http://prachatai.org/english/node/5477>

<sup>38</sup> Thai PM vents fury at critics, threatens ‘attitude adjustment’, Reuters, 11 September 2015, available at <http://www.reuters.com/article/2015/09/11/us-thailand-politics-idUSKCN0RB00120150911>

<sup>39</sup> Nigel S. Rodley, “Reflections on Working for the Prevention of Torture,” *Essex Human Rights Review* 6, no. 1 (2009). 15-21, at 15, available at <http://projects.essex.ac.uk/ehrr/V6N1/Rodley.pdf>.

<sup>40</sup> TLHR, *The Human Rights Situation 100 Days after the Coup*, 8 September 2013, available at <http://protectionline.org/files/2014/09/ALL-EN-TLHR-100-days-Human-Rights-Report1.pdf>

<sup>41</sup> *Ibid.* Also see paragraph 29, the case of criminal defamation charges against human rights defender Ms. Pornpen Ms. Pornpen Khongkachonkiet, for reporting allegations of torture of prisoners in military custody.

<sup>42</sup> On 25 March 2015, NHRC Commissioner, Dr. Niran Pitakwatchara, reported that prison wardens at Bangkok

punching of four suspects and electrical shocking of one suspect in military custody from 9 to 15 March 2015 before being taken to the Military Court to be charged with offences relating to a March 2015 grenade explosion.<sup>43</sup>

### **Enforced disappearance**

21. Thailand's March 2012 responses to the 2011 UPR stated intention to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (CED).<sup>44</sup> Thailand's signature of the CED was welcomed. In Thailand's voluntary pledges and commitments made as part of its Candidature to the Human Rights Council in 2014,<sup>45</sup> Thailand indicated it was "in the process of ratifying" the CED (para 7). Ratification has not yet occurred.
22. Between 1980 and 2014, the Working Group on Enforced or Involuntary Disappearances (WGEID), transmitted 89 cases of enforced disappearance to Thailand of which 81 remain unresolved. Human rights lawyer Mr. Somchai Neelapaijit, was abducted by state officials and disappeared on 12 March 2004, but there has not yet been a proper investigation. Mr. Porlajee (Billy) Rakchongcharoen, Karen land rights activist, was forcibly disappeared in April 2014 after National Park officials admit detaining and questioning him; he has never been seen again despite park officials' claims to have released him. While Thai authorities have transferred the park chief from his post, courts have rejected attempts by Mr. Porlajee's family to link park officials with his disappearance.

### **Reprisals against human rights defenders: Judicial and administrative harassment**

23. There are several continuing cases of harassment of human rights defenders through abuse of national laws, including lèse majesté, criminal defamation, the *Computer Crimes Act* or other means.
24. Mr. Somyot Prueksakasemsuk, a human rights defender and editor, has been incarcerated since April 30, 2011 on charges under *Penal Code*, section 112 (lèse majesté). He is awaiting appeal of his January 2013 conviction and eleven-year jail sentence. Mr. Somyot has been

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Remand Prison turned him and a group of Ministry of Justice forensic science experts away from the prison where they planned to meet with the four prisoners to investigate and collect evidence of the prisoners' claims that they were tortured while in military custody. Prison wardens reportedly refused the NHRC visit on the grounds that the NHRC Commissioner did not have the necessary authorization from the Director of the Department of Corrections. Dr. Niran reported that he had filed a request for the visit on 20 March but that it had not yet been approved, but that never before had his visits been hindered. In March 2015, the TLHR sent a letter to the prison seeking a doctor's certificate and photographs of the four prisoners taken immediately after their transfer to the transfer to the Bangkok Remand Prison. On 21 April 2015, Bangkok Remand Prison sent a letter of reply stating that the Department of Corrections could not supply the requested medical certificates and photographs due to national security concerns. See "Human Rights Officials Barred From Visiting Alleged Torture Victims in Prison," *Khaosod*, 25 March 2015, available at <http://www.khaosodenglish.com/detail.php?newsid=1427290004&section=11&typecate=06>

<sup>43</sup> "Martial Court Denies Alleged Torture Victim Bail," *Khaosod*, 23 March 2015, available at <http://www.khaosodenglish.com/detail.php?newsid=1427113315>

<sup>44</sup> UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, available at: <http://www.refworld.org/docid/47fdfaeb0.html> [accessed 20 September 2015]

<sup>45</sup> UNGA, 69th session, Letter dated 22 July 2014 from the Permanent Representative of Thailand to the United Nations addressed to the President of the General Assembly, UN Doc. A/69/175, as cited at <https://www.fidh.org/International-Federation-for-Human-Rights/asia/thailand/16190-thailand-action-not-words-needed-to-abolish-the-death-penalty>.

denied bail 16 times despite a finding by the WGAD that he is arbitrarily detained.<sup>46</sup>

25. On 27 June 2015, Ms. Sirikan Charoensiri of the TLHR, a lawyer for some of the fourteen students subject to military *proceedings* discussed in paragraph 4 (note 7) above, was subjected to unlawful search of her vehicle by Royal Thai Police who announced they were considering legal action against her, visited her home and questioned her family members. Such harassment violates the UN *Basic Principles on the Role of Lawyers*<sup>47</sup> which provide that:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

26. There has also been retaliation against human rights defenders<sup>48</sup> who expose reports of labour rights violations, human trafficking and torture.

27. Since February 2013, the Natural Fruit Co. Ltd (Natural Fruit) has filed criminal and civil defamation lawsuits in retaliation against a British human rights researcher, Mr. Andy Hall, for his research on labour rights violations in Natural Fruit's factory, published by a European NGO in January 2013.<sup>49</sup> On October 29, 2014, a Provincial Court dismissed one of Natural Fruit's criminal defamation lawsuits against Mr. Hall, but Natural Fruit and the Attorney General appealed. In September 2015, the Appeal Court dismissed the appeal. However, Mr. Hall faces further criminal defamation charges by Natural Fruit under *Penal*

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<sup>46</sup>For details and a timeline, see LRWC, "Thailand: Four years of arbitrary detention of human rights defender, Mr. Somyot Prueksakasemsuk," Statement, 12 May 2015, available at <http://www.lrwc.org/thailand-four-years-of-arbitrary-detention-of-human-rights-defender-mr-somyot-prueksakasemsuk-statement/>

<sup>47</sup>United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>. For example, on 27 June 2015, a lawyer, **Ms. Sirikan Charoensiri** of the TLHR, was subjected to unlawful search of her motor vehicle. The Royal Thai Police announced they were considering legal action against her and visited her home and questioned her family members.

<sup>48</sup>For details, see LRWC, Thailand: Thailand Must Halt Prosecution of Migrant Labour Rights Researcher Andy Hall, Statement, 30 July 2015, available at <http://www.lrwc.org/ws/wp-content/uploads/2015/07/Andy-Hall-Thailand-LRWC-30-July-2015.pdf>; "Thai Pineapple Industry Association (TPIA) action requested in case of Natural Fruit v. Andy Hall," Joint Letter with 108 signatures including LRWC to TPIA, 8 August 2014, available at: <http://www.lrwc.org/?p=8378>; Also see "Thai Pineapple Industry Association (TPIA) responsibility to engage in dialogue about alleged human rights violations in Thailand's fruit industry," LRWC letter to TPIA 14 August 2014, available at <http://www.lrwc.org/?p=8408>; LRWC, Thailand: Consular Protection of Human Rights Defender and UK Citizen, Mr. Andy Hall: Judicial Harassment in Thailand; Court Hearing 2 July 2014, Letter, 30 June 2014, <http://www.lrwc.org/ws/wp-content/uploads/2014/06/Re-Andy-Hall-LRWC-to-HagueKent-29-06-14.pdf>.

<sup>49</sup>Sonja Vartiala et al, Executive Summary, *Cheap Has a High Price* (Finland: Finnwatch, January 2013), <http://finnwatch.org/en/news/80-finnwatch-reveals-serious-human-rights-violations-behind-european-food-brands>;  
Sonja

Vartiala, *Out of a Ditch, into a Pond: Follow-up Research on the Effects of the Finnwatch Report Cheap Comes with a*

*High Price* (Finland: Finnwatch, February 2014), available at [http://oppenheimer.mcgill.ca/IMG/pdf/Finnwatch\\_-\\_PLF\\_ENG.pdf](http://oppenheimer.mcgill.ca/IMG/pdf/Finnwatch_-_PLF_ENG.pdf).

*Code Article 328 and the Computer Crimes Act* <sup>50</sup>

28. In December 2013, the Royal Thai Navy file charges of criminal defamation under the *Penal Code* and under the *Computer Crime Act* against two human rights journalists, Ms. Chutima Sidasathian and Mr. Alan Morison in retaliation for their publication of excerpts of a Reuters report on human trafficking and other human rights violations against migrant Rohingya people from Myanmar. The court dismissed the charges on 1 September 2015, but the Royal Thai Navy has reportedly indicated it may appeal the acquittal.<sup>51</sup>
29. In August 2014, the Cross Cultural Foundation (CCF) released a report alleging torture committed by Thai military authorities. On 24 August 2014, the Army Task Force charged Ms. Pornpen Khongkachonkiet, Director of the CCF, and the CCF with criminal defamation. On 17 June 2015, a Provincial Prosecutor made a non-prosecution order in the case.<sup>52</sup>
30. The legal proceedings launched against prominent human rights defenders have compromised trust in the independence and integrity of Thailand's legal system and creates fear among those seeking redress for human rights violations.
31. Reprisals against human rights defenders are aided by laws that fail to meet international human rights standards. Thailand's criminal defamation laws and the *Computer Crimes Act* fail to meet international human rights standards in that they are vague, overly broad and impose disproportionately harsh criminal sanctions and contravene Thailand's domestic and international legal obligations to ensure that all persons within its territory can exercise their lawful right to freedom of expression without risk of criminal sanctions; The UN Working Group on Arbitrary Detention (WGAD) found that Thailand's *Criminal Code* Section 112 (*lèse majesté*) suppresses "important debates on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression."<sup>92</sup> Detention on such charges — before or after conviction—is arbitrary and violates the ICCPR.
32. LRWC notes Thailand's commitments during its 2011 UPR that:
  - 89.54. Thailand's domestic legislation must necessarily be consistent with both the Thai Constitution and the country's international obligations, including the ICCPR.
  - 89.55. As with other criminal cases, legal proceedings in cases concerning *lèse-majesté* are open and transparent in line with the *Criminal Procedure Code*.

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<sup>50</sup> For details, see LRWC, Thailand: Thailand Must Halt Prosecution of Migrant Labour Rights Researcher Andy Hall, Statement, 30 July 2015, available at <http://www.lrwc.org/ws/wp-content/uploads/2015/07/Andy-Hall-Thailand-LRWC-30-July-2015.pdf>; "Thai Pineapple Industry Association (TPIA) action requested in case of Natural Fruit v. Andy Hall," Joint Letter with 108 signatures including LRWC to TPIA, 8 August 2014. available at: <http://www.lrwc.org/?p=8378>; Also see "Thai Pineapple Industry Association (TPIA) responsibility to engage in dialogue about alleged human rights violations in Thailand's fruit industry," LRWC letter to TPIA 14 August 2014, available at <http://www.lrwc.org/?p=8408>; LRWC, Thailand: Consular Protection of Human Rights Defender and UK Citizen, Mr. Andy Hall: Judicial Harassment in Thailand; Court Hearing 2 July 2014, Letter, 30 June 2014, <http://www.lrwc.org/ws/wp-content/uploads/2014/06/Re-Andy-Hall-LRWC-to-HagueKent-29-06-14.pdf>.

<sup>51</sup> Communications from two sources dated 11 and 21 September in possession of LRWC.

<sup>52</sup> Cross Cultural Foundation, "Public Prosecutor filed non-prosecution on the case filed by the 41st Infantry Regiment against the Cross Cultural Foundation (CrCF) and Ms. Pornpen Khongkachonkiet in a criminal defamation suit," Press release, Voices from Thais, 1 September 2015, available at <https://voicefromthais.wordpress.com/2015/09/02/public-prosecutor-filed-non-prosecution-on-the-case-filed-by-the-41st-infantry-regiment-against-the-cross-cultural-foundation-crcf-and-ms-pornpen-khongkachonkiet-in-a-criminal-defamation-suit/>

89.56. Persons charged with lèse-majesté are accorded the same rights as persons charged with other criminal offences, which include the provision of legal counseling.

### **Recommendations**

LRWC recommends that Thailand:

33. Ensure access to civilian courts by all civilians for determination of charges and the legality of detention and treatment, in accordance with the ICCPR and the CAT;
34. Ensure that all revisions of the *Military Court Act* of 1955 adhere to the *Decaux Principles* and the ICCPR, and in particular ensure that civilians may not be tried by Military Courts;
35. Ensure the implementation and enforcement of the CAT including prompt, impartial investigation of all allegations of torture or ill-treatment;
36. Ensure that all laws are brought into conformity with the CAT, and in particular that Thailand address concerns of the Committee Against Torture that “the absence of a definition of torture and that torture is not recognized as an offence, in accordance with the Convention, in the State party’s legal system” and to ensure that Thailand’s amendments of the *Penal Code* fully address the Committee’s concerns and recommendations;<sup>53</sup>
37. Ratify the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 2006;<sup>54</sup>
38. Make publicly available details of all cases of civilians being held in military custody or being processed in the Military Court system, including names, dates of arrest and places of detention;
39. Ratify the CED without undue further delay;
40. Ensure that the draft Constitution 2015 adheres to all Thailand’s international human rights law obligations;
41. Amend national laws in conformity with the Thailand’s human rights obligations, including the *Penal Code* Article 112 (lèse majesté), the *Computer Crimes Act*, and Thailand’s criminal defamation laws in Chapter 3 of the *Penal Code*.
42. Put an end to interference with or retaliation against the legitimate work of lawyers and human rights defenders by state and private agents, in conformity with the provisions of the UDHR, the ICCPR, the *Basic Principles on the Role of Lawyers* and the *Declaration on Human Rights Defenders*.

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<sup>53</sup> Committee against Torture, Concluding observations on the initial report of Thailand, 20 June 2014. available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPr:CAqhKb7yhsK2oy72JlefPnicA9mLXtq%2B9%2F5hbXwg%2B5JWNDr0RdTusMRgzu6yegqVTu8QgwbPcc9dlir1Tfe5g9kMOTJykFvZmYIG7TVsYdYcm2OgOMRJK>

<sup>54</sup> UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, 9 January 2003, A/RES/57/199, available at: <http://www.refworld.org/docid/3de6490b9.html>.