

## Individual Submission to the 39 th Session of the Universal Periodic Review

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### The Political Prisoner and Fundamental Rights in Thailand

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#### Organisational Description:

The Project X is a working group for political prisoners and former political prisoners, founded by Prontip Mankhong; a former political prisoner and their volunteers who are interested in this issue. The Project X was initially established in 2017 and now serves eleven political prisoners which target

- I. To maintain and heal the mental state of political prisoners and former political prisoners;
- II. To bring stories of former political prisoners to society through art and creativity;
- III. To drive policy issues for the purification of political prisoners in Thailand.

#### INTRODUCTION

This submission analyses Thailand's human rights situation between 2016 and 2021, following the 2nd cycle of the Universal Periodic Review in 2016. During four years, political prisoners lacked status and remedies, and their needs integrated into civil and political rights protection. The X Project then was established to assist political prisoners, especially women, to resettle their life after the release. The project aims to reflect the practice of both judicial and physical harassment against political prisoners, rules which are considered as discriminatory practical,

and their life after being labeled by the criminal proceeding.

At the date of submission, demonstrations have consistently taken place across the country and some former political prisoners joined or were affected by the sweeping arrest and prosecution filed against them. Besides, over 400 protesters have been charged and prosecuted which will result in more political prisoners being jailed. Thus, more political prisoners will be increased and their right to a fair trial, especially the right to bail and non-discriminatory are at risk of being violated by several actors.

## **EXECUTIVE SUMMARY**

This submission includes certain issues concerning political prisoners. First, Project X outlines the previous recommendations related to political prisoners then defines the definition of them under to frame the scope of submission. Second, the tentative charges which political prisoners have experienced would be unpacked, revealing the practice of military court implemented over civilians and political exiles who live outside the country. Third, the limitation of right to a fair trial and right to not be subject to discrimination based on their political opinion and the restriction of right to access to effective and adequate remedies have been examined over the cases of both former political prisoners and those who are being detained as a result of their exercise of civil and political rights at present. Lastly, ANNEX A aims to underline four former political prisoners which now are subject to arbitrarily arrested and detained in the Bangkok Remand Prison.

### **RECOMMENDATIONS:**

- Immediately drop charges and end arbitrary arrest and detention against political prisoners
- Taking the issue of a gender perspective into account, effectively and adequately provide rehabilitation programs and supports to the political prisoner

## **PREVIOUS RECOMMENDATIONS ON THE POLITICAL PRISONER**

At the 2nd cycle of UPR review, Thailand received 291 recommendations. Of these, 209 were accepted; 82 were noted.<sup>1</sup> Although none address the issues of political prisoners, some were relevant including the abolishment or amendment of lese majesty offence and the ending of civilian prosecutions in military courts.<sup>2</sup> These were closely related to the right to freedom of expression and peaceful assembly as well as the right not to be subjected to torture or enforced

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<sup>1</sup> UPR info, Thailand Second Review Session 25, *2RP: Responses to Recommendations & Voluntary Pledges*, 2016, p1

<sup>2</sup> *Cycle 2 noted recommendations*: (1) take steps to abolish the lese majesty legislation and the Computer Crime Act: UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand (Cycle 2)*, UN doc. no. A/HRC/25/13, para. 159, recommendation 159. 54 (Norway); (2) end practicing in the military court: UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand (Cycle 2)*, UN doc. no. A/HRC/25/13, para. 159, recommendation 159. 13 (the Netherlands), 159.36 (Greece), 159.38 (New Zealand), 159.39 (Norway), 159.42 (Austria), 159.43 (Canada) and 159. 46 (Germany)

disappearance.<sup>3</sup> Thailand was requested to conduct investigations into the allegations against Human Rights Defenders and to release those subjected to arbitrary prosecutions during the coup.<sup>4</sup> No recommendations were referring to rehabilitations or remedies to persons whose rights were violated by the state officials or non-state actors.

Thailand accepted the recommendations regarding the development of a national framework in compliance with the Nelson Mandela rules.<sup>5</sup> Following the midterm review in 2018, the Prison Act of 1936 was revoked and the Corrections Act B.E.2560 was launched along with a pilot penitentiary project aiming at improving prisoners' living conditions.<sup>6</sup> Other good-practices were introduced to advance health and welfare service in prison facilities including alternative criminal sanctions.<sup>7</sup> Yet, none addressed the particular needs of political prisoners.

## I. THE DEFINITION OF THE POLITICAL PRISONER

The definition of the political prisoner has yet to be determined by international human rights instruments. This lack of international consensus challenges the protection of those subjected to selective charges, detentions, living in exile, or being discriminately punished due to their political will.<sup>8</sup> Some civil rights organisations have proposed scope of the definition, to include individuals who face prosecutions and imprisonment up to 6 months.<sup>9</sup> **For this submission, political prisoners are referred to those who are charged, or would be charged, as a result of their political opinions, or will to express, assemble or associate in public activities through different non-violence means. These must be targeted and discriminately imprisoned up to 14 days without reasonable grounds regardless of their legal proceeding encounters or facing imprisonment up to 3 years. This includes those who are prosecuted or threatened to be prosecuted and choose to live in exile, and if**

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<sup>3</sup> UPR info, Thailand Second Review Session 25, *2RP: Responses to Recommendations & Voluntary Pledges*, 2016, p1-11 and p12-17

<sup>4</sup> *Cycle 2 noted recommendations*: (1) end to arbitrary detentions and arrests and any act of harassment against political actors and civil society, including human rights defenders: UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand (Cycle 2)*, UN doc. no. A/HRC/25/13, para. 159, recommendation 159. 58 (Switzerland):

<sup>5</sup> *Cycle 2 supported recommendations*: (1) guarantee to all categories of prisoners in all places of detention according to the Nelson Mandela rules : UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Thailand (Cycle 2)*, UN doc. no. A/HRC/25/13, para. 159, recommendation 159. 31 (United Kingdom of Great Britain and Northern Ireland)

<sup>6</sup> Highlights of Thailand's implementation of recommendations and voluntary pledges under the second cycle of the Universal Periodic Review 2016-2018 (Mid-term update), Ministry of Foreign Affairs, 2018, p 8-9

<sup>7</sup> Highlights of Thailand's implementation of recommendations and voluntary pledges under the second cycle of the Universal Periodic Review 2016-2018 (Mid-term update), Ministry of Foreign Affairs, 2018, p 8-9

<sup>8</sup> 'The definition of political prisoner', *Parliamentary Assembly: Assembly debate on 3 October 2012 (33rd Sitting)*, 2012, available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150&lang=en>

<sup>9</sup> (1) 'Guidelines on Definition of Political Prisoner', Human Rights Centre Memorial, 2021, available at <https://memohrc.org/en/specials/guidelines-definition-political-prisoner>

**they return, they will face imprisonment up to 3 years.<sup>10</sup>**

According to Thai Lawyers for Human Rights (TLHR)'s report on 6 years after the 2014 coup, 26 people were defined as political prisoners. TLHR further stated that at least 104 now live in exile, mostly in Cambodia, Laos, and Vietnam.<sup>11</sup>

### **RECOMMENDATIONS:**

- Recognise the political prisoner under the national policy and legal framework, granting them an official status to obtain rights and liberties as 'the political prisoner'

## **II. TENTATIVE OF CHARGES**

Over the past 4 years, those defined as political prisoners are categorised as affected people whose civil and political rights are systematically violated by state actors following the coup in 2014.<sup>12</sup> The practice made them invisible under the international lens on human rights. They were unable to access proper remedies or judicial guarantee of right to fair trial.<sup>13</sup>

When the National Council for Peace and Order (the NCPO) introduced the military courts and its jurisdiction over civilians who committed crimes related to national security, it included those charged with lese majesty offence, sedition-like offence, crime association, violating the NCPO

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<sup>10</sup> Human Rights Fact Sheet #26, Working Group on Arbitrary Detention, available at <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>

(2) International Convention for the Protection of All Persons from Enforced Disappearance, December 20, 2006, available at <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>

(3) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), December 18, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

(4) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Resolution # 43/173, December 9, 1988, available at <http://www.un.org/documents/ga/res/43/a43r173.htm>

(5) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987, available at <http://www.cpt.coe.int/en/documents/ecpt.htm>,

<sup>11</sup>“6 ปีรัฐประหาร : เปิดสถิติคดีการเมือง-ละเมิดสิทธิภายใต้ “ระบอบ คสช.” จากยุคอำนาจนิยม ถึง อำนาจกลายรูป”, บีบีซี ไทย, 22 May 2020, available at <https://www.bbc.com/thai/thailand-52755912>

<sup>12</sup> UPR info, Thailand Second Review Session 25, *2RP: Responses to Recommendations & Voluntary Pledges*, 2016, p1-11 and p12-17

<sup>13</sup> Interview with political prisoner between 2018 and 2020

orders and announcements and possession of war weapons.<sup>14</sup> All are subjected to adjudication lacking a legal competent and under the impartiality tribunal.<sup>15</sup>

As of February 2020, at least 2,408 individuals in 1,886 cases brought to the military court with a limit offer right to fair trial guaranteed by the ICCPR<sup>16</sup>, including 169 and 121 persons charged with lese majesty and sedition-like offence<sup>17</sup> and 944 persons with possession of war weapons and related allegations.<sup>18</sup> Most of them criticise the state, the monarchy or high-ranking state officials.<sup>19</sup> Some were allegedly involved in political opposition or being supporters of the ‘Red-Shirt’ movement.<sup>20</sup>

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<sup>14</sup> (1) The NCPO Announcement No. 37/2557 ‘Prosecuting civilians under the military court jurisdiction’, art. 2, available at [https://library2.parliament.go.th/giventake/content\\_ncpo/ncpo-announce37-2557.pdf](https://library2.parliament.go.th/giventake/content_ncpo/ncpo-announce37-2557.pdf) (last accessed 27 Feb 2021), p.3 of the Government Gazette dated 30 May 2014;

(2) The NCPO Announcement No. 38/2557 ‘Litigations related to the military court jurisdiction’, available at [https://library2.parliament.go.th/giventake/content\\_ncpo/ncpo-announce38-2557.pdf](https://library2.parliament.go.th/giventake/content_ncpo/ncpo-announce38-2557.pdf) (last accessed 27 Feb 2021), p.1 of the Government Gazette dated 30 May 2014.

(3) The NCPO Announcement No.50/2557 ‘Designating possession of war weapon to be subject under the military court’, available at <http://www.personnelpolice.com/kosorcho/announce/kct50.pdf> (last accessed 13 March 2021), p 2 of the Government Gazette dated 5 June 2014.

<sup>15</sup> SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS & THAI LAWYERS FOR HUMAN RIGHTS TO THE UNIVERSAL PERIODIC REVIEW OF THAILAND: UNITED NATIONS HUMAN RIGHTS COUNCIL 25th Session of the Working Group on Universal Periodic Review: *International Jurist Commission, Thai Lawyers for Human Rights, and Cross Cultural Foundation*, April /May 2016, p 3-4, available at <https://www.icj.org/wp-content/uploads/2015/09/THAILAND-UPR-SUBMISSION-FINAL-AS-LODGED-Advocacy-Non-legal-submission-2015-ENG.pdf> (last accessed 13 March 2021)

<sup>16</sup> “ผลกระทบจากประกาศ คสช., คำสั่ง คสช. และคำสั่งหัวหน้าคสช. กรณีการดำเนินคดีต่อพลเรือนในศาลทหาร การจำกัดเสรีภาพการแสดงออก และการจำกัดเสรีภาพสื่อมวลชน”, สภาผู้แทนราษฎร, p 5 dated 13 Feb 2020, available at (last accessed 13 March 2021)

<sup>17</sup> “Five years under NCPO, isn’t that enough? Recommendations to eliminate the effects of the coup”, *Thai Lawyers for Human Rights*, 18 July 2019, available at <https://tlhr2014.com/en/archives/13035> (last accessed 27 Feb 2021).

<sup>18</sup> “เปิดสถิติการดำเนินคดีพลเรือนในศาลทหาร”, *Thai NGOs*, dated XX XX XX, available at [http://thaingo.in.th/news/?p=content&act=detail&id\\_content=2833](http://thaingo.in.th/news/?p=content&act=detail&id_content=2833) (last accessed 13 March 2021)

<sup>19</sup> “กลไกพิเศษของสหประชาชาติได้รับการร้องเรียน กรณีควบคุมตัวจำเลยคดี 112 ที่ยาวนานสุด”, ประชาไท, 6 November 2018, available at <https://prachatai.com/journal/2018/11/79489> (last accessed 13 March 2021)

<sup>20</sup> “คทาวุธ คดี 112 จัดรายการ ‘นายแนนมาก’, ศูนย์ทนายความเพื่อสิทธิมนุษยชน, XX XX XX, available at [TLHR \(tlhr2014.com\)](http://tlhr2014.com) (last accessed 13 March 2021)

<sup>21</sup> The HNCPO Order No.22/2561 ‘Allowing for the resumption of political activities’, Article 1, available at [https://library2.parliament.go.th/giventake/content\\_ncpo/ncpo-head-order22-2561.pdf](https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order22-2561.pdf) (last accessed 27 Feb 2021), p.55 of the Government Gazette dated 11 December 2019

The HNCPO Order No.9/2562 ‘Abolishing orders and announcements issued by the NCPO’, Article 2, available at [http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/174/T\\_0022.PDF?fbclid=IwAR0r7Ef\\_3zmtoljdCZKdPRm\\_qDjm1xMyFhQzpiEniTpCVWGFwPaSy\\_BXS0](http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/174/T_0022.PDF?fbclid=IwAR0r7Ef_3zmtoljdCZKdPRm_qDjm1xMyFhQzpiEniTpCVWGFwPaSy_BXS0), p 22 of the Government Gazetted dated 9 July 2019.

In 2019, the state declared to end prosecutions of civilians in military courts,<sup>21</sup> at least 517 cases were transferred to the Court of Justice.<sup>22</sup> However, the transmissibility did not abolish the verdicts ordered by the military court which punished one of the defendants with 70 years in jail.<sup>23</sup> 528 arrested warrants issued by military courts allowed the authorities to prosecute people under both military and civilian courts jurisdictions.<sup>24</sup> One case related to lese majeste offence is currently jailed in pretrial detention.<sup>25</sup> As of February 2021, at least 6 lese majeste cases had been delivered.<sup>26</sup> Among these, Anchan Preeleart was reserved the highest imprisonment of 87 years but mitigated to 43 years and 6 months due to her confession.<sup>27</sup>

There are also individuals codified as political exiles amounting to 104 cases in 2019,<sup>28</sup> none of them are legally recognised by the state or neighboring officials.<sup>29</sup> 9 persons reportedly were forced to disappear and 2 of which were found dead in the Mekong River without impartial

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<sup>21</sup> The HNCPO Order No.22/2561 'Allowing for the resumption of political activities', Article 1, available at [https://library2.parliament.go.th/giventake/content\\_ncpo/ncpo-head-order22-2561.pdf](https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order22-2561.pdf) (last accessed 27 Feb 2021), p.55 of the Government Gazette dated 11 December 2019

The HNCPO Order No.9/2562 'Abolishing orders and announcements issued by the NCPO', Article 2, available at [http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/174/T\\_0022.PDF?fbclid=IwAR0rI7Ef\\_3zmtoljdCZKdPRm\\_qDjm1xMyFhQzpiEniTpCVWGFWPaSy\\_BXS0](http://www.ratchakitcha.soc.go.th/DATA/PDF/2562/E/174/T_0022.PDF?fbclid=IwAR0rI7Ef_3zmtoljdCZKdPRm_qDjm1xMyFhQzpiEniTpCVWGFWPaSy_BXS0), p 22 of the Government Gazetted dated 9 July 2019.

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“ทนายความสิทธิฯ เสนอรัฐยกเลิกการใช้ศาลทหารต่อพลเรือนทุกกรณี”, benarnews, 13 September 2016, available at <https://www.benarnews.org/thai/news/TH-court-09132016181424.html> (last accessed 13 March 2021)

<sup>23</sup> “เรียรสุธรรม คดี 112 (เฟสบุค “ใหญ่ แดงเดือด)”, ศูนย์ทนายความเพื่อสิทธิมนุษยชน, XX XX XX, available at [TLHR\(tlhr2014.com\)](http://TLHR(tlhr2014.com)) (last accessed 13 March 2021)

<sup>24</sup> “ข้อเสนอต่อการจัดการผลพวงรัฐประหาร ทางกฎหมาย นโยบาย และกระบวนการยุติธรรม เพื่อคุ้มครองสิทธิเสรีภาพของประชาชน”, ศูนย์ทนายความเพื่อสิทธิมนุษยชน, October 2019, p 100, available at [https://tlhr2014.com/?wpfb\\_dl=112](https://tlhr2014.com/?wpfb_dl=112) (last accessed 23 March 2021)

<sup>25</sup> “พอร์ท ไฟเย็น ถูกจับคดี ม.112 ตามหมายจับศาลทหารปี 59”, ประชาไท, 6 March 2021, available at <https://prachatai.com/journal/2021/03/91980> (last accessed 13 March 2021)

<sup>26</sup> “ม. 112 : แอมเนสตี อินเทอร์เน็ตเนชั่นแนล วิจารณ์ไทยลงโทษจำคุกคดีหมิ่นพระบรมเดชานุภาพสูงสุดเท่าที่เคยมีมา”, 20 January 2021, available at <https://www.bbc.com/thai/international-55735197> (last accessed 23 March 2021)

<sup>27</sup> “Thai woman jailed for record 43 years for criticising monarchy”, BBC News, 19 January 2021, available at <https://www.bbc.com/news/world-asia-55723470> (last accessed 13 March 2021)

<sup>28</sup> “สนทนานวันผู้ลี้ภัยโลก: ผู้ลี้ภัยทางการเมืองไทยมีอย่างน้อย 86 คนหลังรัฐประหาร”, ประชาไท, 26 June 2019, available at <https://prachatai.com/journal/2019/06/83138> (last accessed 13 March 2021)

<sup>29</sup> “ชะตากรรมผู้ลี้ภัยการเมืองชาวไทย และผู้ลี้ภัยชาวต่างชาติในไทย ตั้งแต่ปี 2557”, โครงการอินเทอร์เน็ตทกกฎหมายเพื่อประชาชน (Ilaw), 23 September 2019, available at <https://freedom.ilaw.or.th/node/733> (last accessed 13 March 2021)

investigations.<sup>30</sup> Others live under threats while their status is not yet recognised under the UNHCR process.<sup>31</sup>

Charges including illegal assembly, expressing or imparting data content threaten national security, insulting the Queen and Her liberties and other criminal offences have been used as a political means to target those engaging in mass demonstrations in the past year.<sup>32</sup> Consequently, the number of judicial harassments has increased over 382 individuals in 207 cases at the early of 2021.<sup>33</sup>

Additional emergency law was enacted to limit the COVID-19 transmission as well as national threat on 26 March and 15 October 2020, 76 people were charged under lese majesty offence, 99 sedition-like offence, 5 persons for threatening the Queen and Her liberties and over 300 people for conducting illegal assemblies which violated both the Penal Code, the Emergency Decree, and the Public Assembly Act B.E.2558.<sup>34</sup> Some of them are former political prisoners, including Somyot Pruksakasemsuk, Patiwat Saraiyaem, and Jatupat Boonphattaraksa.

## RECOMMENDATIONS:

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<sup>30</sup> (1)

“แอมเนสตี้แกลงเรียกร้องให้กัมพูชาเพิ่มความพยายามในการสอบสวนกรณีวันเฉลิมและแก้ไขปัญหาการสอบสวนที่ล่าช้า”, *Amnesty International Thailand*, 8 December 2020, available at <https://www.amnesty.or.th/latest/news/871/> (last accessed 13 March 2021)

(2) “1 ปีแห่งความเจ็บ ไร้เสียงตอบกลับ กรณีผู้ลี้ภัยทางการเมืองไทยถูกบังคับสูญหาย”, *the Standard*, 26 December 2019, available at <https://themomentum.co/the-silent-disappearance-of-thai-political-refugee/> (last accessed 13 March 2021)

(3) “ครอบครัว-เพื่อน ‘สยาม’ ร้อง กสม.-ทูตเวียตนามตามหาตัว หลังข่าวหายตัวยังไม่คืบ”, *ประชาไท*, 13 May 2019, available at <https://prachatai.com/journal/2019/05/82457> (last accessed 13 March 2021)

<sup>31</sup> Confidential interview with enforced disappearance’s family dated 12 March 2021

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“อัยการยังไม่รับสำนวนคดี ม.110 “ประทุษร้ายเสรีภาพราชินี” หลังมีผู้ต้องหาเพิ่มอีก 2 ราย”,

ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 22 January 2021, available at <https://tlhr2014.com/archives/25452> (last accessed 23 March 2021)

<sup>33</sup> “กม.ภา 64 : คดีทางการเมืองยังเพิ่มขึ้นต่อเนื่อง ถึง 207 คดี ผู้ถูกกล่าวหากว่า 382 คน”,

ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 3 March 2021, available at <https://tlhr2014.com/archives/26506> (last accessed 23 March 2021)

<sup>34</sup> “สถิติผู้ถูกดำเนินคดีมาตรา 112 “หมิ่นประมาทกษัตริย์” ปี 2563-64”, ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 21 March 2021, available at <https://tlhr2014.com/archives/23983> (last accessed 23 March 2021)

“อัยการยังไม่รับสำนวนคดี ม.110 “ประทุษร้ายเสรีภาพราชินี” หลังมีผู้ต้องหาเพิ่มอีก 2 ราย”,

ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 22 January 2021, available at <https://tlhr2014.com/archives/25452> (last accessed 23 March 2021)

“ศูนย์ทนายฯ เผย เดือนกุมภาพันธ์ถูกดำเนินคดีการเมืองเพิ่ม 91 ราย รวม 7 เดือน 382 ราย 223 คดี เป็นเยาวชน 13 ราย”, *The Standard*, 4 March 2021, available at <https://thestandard.co/february-there-were-91-additional-political-prosecutions/> (last accessed 23 March 2021)

- Immediately end practice of military court over civilians, arrest warrants issued by the military court must be invalidated
- Immediately decriminalise laws, including the Emergency Decree which restrict the right to freedom of expression and peaceful assembly
- Guarantee the right to a fair trial, especially the right to bail and the right to have chosen lawyer for political exiles who allegedly charged with politically- motivated offence and decide to return the country

### III. LIMITATION OF RIGHT TO A FAIR TRIAL AND RIGHT TO NOT BE SUBJECT TO DISCRIMINATE

As of the date of submission, at least 18 persons have been charged with serious crimes which 'threaten national security' and jailed at the pre-trial process.<sup>35</sup> 7 of them together with 5 persons involved in September and November 2020 demonstrations are arbitrarily detained while waiting for the Court of First Instance trial.<sup>36</sup> Their right to bail was repeatedly denied by the courts. Given re-commission of crime and evasion to this case violate the presumption of innocence.<sup>37</sup> Defendants are now predicted to be detained while the officials appear to press additional charges against them.<sup>38</sup>

At least 24 children in 26 cases have been prosecuted with serious crimes.<sup>39</sup> 6 of them were charged with lese majesty offence,<sup>40</sup> while others submitted non-prosecution petitions to the

<sup>35</sup> “ผู้ต้องขังทางการเมือง” ถูกคุมขังระหว่างการดำเนินคดี อย่างน้อย 18 คน แล้ว”, ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 8 March 2021, available at [https://www.facebook.com/lawyercenter2014/posts/3724717820911378?\\_rdc=1&\\_rdr](https://www.facebook.com/lawyercenter2014/posts/3724717820911378?_rdc=1&_rdr) (last accessed 23 March 2021)

**36** “ศาลไม่ให้ประกัน 8 ราษฎร ระบุไม่มีเหตุให้เปลี่ยนแปลงคำสั่งเดิม

ยื่นคำร้องอาทอนที่อาจได้รับอันตรายถึงชีวิตในเรือนจำ มิใช่เหตุผลที่ไม่อนุญาตให้ปล่อยตัวชั่วคราว”, ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 17 March 2021, available at <https://tlhr2014.com/archives/27078> (last accessed 23 March 2021)

<sup>37</sup> “เปิดคำร้องยื่นประกัน ‘4 ราษฎร’ ครั้งที่ 4 ซ้ำสิทธิที่จะได้รับการประกันเป็นสิทธิสากล แต่ศาลสั่งยกคำร้องฯ อีก”, ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 4 March 2021, available at <https://tlhr2014.com/archives/26557> (last accessed 23 March 2021)

<sup>38</sup> “ตร.สน.สำราญราษฎร์ เข้าแจ้ง ทำให้เสียทรัพย์-พ.ร.ก.ฉุกเฉินฯ “โมค” ในเรือนจำ เหตุสั่งรื้อกระถางต้นไม้ #มีอบ13กุมภาพันธ์”, ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 23 March 2021, available at <https://tlhr2014.com/archives/27311> (last accessed 23 March 2021)

“ตร. 3 สก.จากเชียงใหม่ แจ้ง 112 เพนกวิน-อาทอนที่ถึงเรือนจำ เหตุปราศรัยถึงทรัพย์สินกษัตริย์”, ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 18 February 2021, available at <https://tlhr2014.com/archives/26129> (last accessed 23 March 2021)

<sup>39</sup> “สถิติเยาวชนถูกดำเนินคดีจากการแสดงออกและการชุมนุม ปี 2563-64”, ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 18 March 2021, available at <https://tlhr2014.com/archives/24941> (last accessed 23 March 2021)

<sup>40</sup> Ibid, c 39

public prosecutor.<sup>41</sup> If indicted, children will face imprisonment up to 15 years in jail.

Individuals prosecuted in politically-motivated cases are targeted for harassment. One of them was charged with the participation of secret and crime association and possession of war weapons, for allegedly helping in transferring money to other suspects. She was jailed for 2 years and 4 months. None remedies were provided to her or her family.<sup>42</sup>

People persecuted under 'illegal possession of war weapons' under the NCPO Announcement Nos 37, 38 and 50,<sup>43</sup> were subject to military jurisdiction, together with the HNCPO No.3/2558 which allows detention without charges up to 7 days.<sup>44</sup> At least 40 individuals charged with lese majesty offences were detained at military camps for investigations.<sup>45</sup> In 'terrorist' cases, which refer to the 'red-shirt movement', suspects were detained over 7 days and tortured to plead guilty.<sup>46</sup> One revealed that he was beaten and sleep deprived while detained at the military camp in the northeast region of Thailand.<sup>47</sup> Another had his eyes covered all day and night during the investigations.<sup>48</sup> Some of them were sized communication equipment and threatened to rape.<sup>49</sup> Some were brought to practice shooting to make them reveal their movements.<sup>50</sup> According to TLHR, 4 cases were brought to the Court of Justice with 2 being dismissed at the Court of First Instance.<sup>51</sup> There were no examinations conducted into these torture allegations.<sup>52</sup> Political exiles in the neighboring countries are living at risk and their families are facing harassment and intimidations from the state.<sup>53</sup> Wanchalearm Satsaksit who was kidnapped

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<sup>41</sup> 3 เยาวชนยื่นหนังสืออัยการ ขอความเป็นธรรม หลังตำรวจสรุปสำนวนผิด ชุมชนฯ โดยไม่สอบสวนเพิ่มตามร้องขอ, The Standard, 24 December 2020, available at <https://thestandard.co/3-youth-file-prosecutor-for-justice/> (last accessed 23 March 2021)

<sup>42</sup> Confidential interview with the victim dated 7 March 2021

<sup>43</sup> Ibid c 14

<sup>44</sup> The HNCPO Order No.3/2558 'Maintaining peace and national security', available at [http://%20https://library2.parliament.go.th/giventake/content\\_ncpo/ncpo-head-order3-2558.pdf](http://%20https://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order3-2558.pdf) (last accessed 13 March 2021, p 1 of the Government Gazette dated 1 April 2014.

<sup>45</sup> "คดีความภายใต้ยุค คสช.: ฐานข้อมูล 112", ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 03 December 2019, available at [คดีความภายใต้ยุค คสช.: ฐานข้อมูลคดี 112 | ศูนย์ทนายความเพื่อสิทธิมนุษยชน \(THAI LAWYERS FOR HUMAN RIGHTS\) \(tlhr2014.com\)](http://คดีความภายใต้ยุค คสช.: ฐานข้อมูลคดี 112 | ศูนย์ทนายความเพื่อสิทธิมนุษยชน (THAI LAWYERS FOR HUMAN RIGHTS) (tlhr2014.com)) (last accessed 23 March 2021)

<sup>46</sup> "Kritsuda reveals military tortured her to link Thaksin to hard-core red shirts", Prachatai English, 2 August 2021, available at <https://prachatai.com/english/node/4267> (last accessed 23 March 2021)

<sup>47</sup> "ยกฟ้อง! คดี ระเบิด มือบกปปส. จำเลยอาจถูกซ้อม ใหรับสารภาพ", ข่าวสด, 23 October 2019, available at [https://www.khaosod.co.th/politics/news\\_1737179](https://www.khaosod.co.th/politics/news_1737179) (last accessed 23 March 2021)

<sup>48</sup> "ไม่ผิดจะกลัวอะไร : "ปราบมาเพียเพื่อความมั่นคง", ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 1 July 2016, available at <https://tlhr2014.com/archives/960> (last accessed 23 March 2021)

<sup>49</sup> Confidential interview with the victim dated 15 March 2021

<sup>50</sup> "คดีปาระเบิดศาลอาญา โอนจากศาลทหาร นัดพร้อมวันนี้ เรียกหลักประกันห้าแสนบาท", ศูนย์ทนายความเพื่อสิทธิมนุษยชน, 28 January 2020, available at <https://tlhr2014.com/archives/15724> (last accessed 23 March 2021)

<sup>51</sup> Ibid c 24, p 126- 129

<sup>52</sup> Ibid c 24, p 129

<sup>53</sup> "ชะตากรรมผู้ลี้ภัยการเมืองชาวไทย และผู้ลี้ภัยชาวต่างชาติในไทย", ILAW, 23 September 2019, available at <https://freedom.ilaw.or.th/node/733> (last accessed 23 March 2021)

outside of his residence in Cambodia is the latest case.<sup>54</sup>

Most political prisoners in prison were forced to sign an agreement to not participate in ‘political activity’ at the minimum 2 years after the release.<sup>55</sup> Some of them were sexually and verbally harassed by prison guards and forced to plead guilty again or promise to not re-commission.<sup>56</sup>

Discriminatory rule further imposed by the Department of Corrections against political prisoners. Jatupat Boonphattaraksa, a former students activist, was sentenced under lese majesty offence for 2 years and 6 months, and Somyot Prueksakasemsuk, a former editor of ‘Voice of Thaksin’ journal, was jailed for seven years experienced their cases are not applied for a pardon as lese majesty offence is ‘concerning the national security.’<sup>57</sup> Both served as ‘good prisoners’ but failed to apply for preliminary release.

#### **RECOMMENDATIONS:**

- Immediately drop charges and end arbitrary arrest and detention against political prisoners together with children prosecuted with criminal offences
- Ensure the right to bail of political prisoners who are being detained is respected throughout the criminal proceeding
- Immediately and promptly investigate in torture allegations over political prisoner cases and ensure their right to access to justice and remedy is protected under national law
- Immediately life discriminatory rules implemented by the Department of Corrections against political prisoners

#### **IV. RESTRICTION OF RIGHT TO REHABILITATION AND SOCIAL JUSTICE**

Thailand's Constitution B.E.2017 and its Article 25 ensure the right to access to remedies for those whose rights are affected by the perpetrator whether they are identified or not.<sup>58</sup> Political prisoners are still unable to access justice and some were forced to disappear without impartial investigations conducted by the State. Their right to adequate, effective and prompt reparation for harm suffered and access to relevant information have also been restricted during the past four years. Some are unable to access final assistance funded by the state, especially the Damage for the Injured Persons and Compensation and Expenses for the Accused in Criminal Cases Act B.E.2544.<sup>59</sup> As Article 20 of the act required that those cases acquitted by the court

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<sup>54</sup> “Wanchalearn Satsaksit: The Thai satirist abducted in broad daylight”, BBC, 2 July 2020, available at <https://www.bbc.com/news/world-asia-53212932> (last accessed 23 March 2021)

<sup>55</sup> Confidential interview with the victim dated 10 December 2020

<sup>56</sup> Confidential interview with the victim dated 15 March 2021

<sup>57</sup> Ibid, c 24, p 129-132

<sup>58</sup> The Constitution of the Kingdom of Thailand B.E.2560, Article 25, available at [https://cdc.parliament.go.th/draftconstitution2/ewt\\_dl\\_link.php?nid=1038&filename=index](https://cdc.parliament.go.th/draftconstitution2/ewt_dl_link.php?nid=1038&filename=index) (last accessed 23 March 2021)

<sup>59</sup> Confidential interview with the political prisoner between 2018 and 2020

must be clearly stated that the defendant is 'not guilty'; however, none of the verdicts contained such statements and most of the cases are dismissed because the public prosecutors are unable to prove their allegations.<sup>60</sup>

As Thailand's policy which lacks a national programme for reparation and their legal framework exclude people who allegedly engaged in political activities from the national fund, most political prisoners have decided to not seek jobs as their criminal record has not yet been abolished.<sup>61</sup> This process prevents them from getting jobs, some are struggling with financial issues as a result of the allegations involved with 'political activities'.<sup>62</sup>

#### **RECOMMENDATIONS:**

- Ensure the right to access to remedy of the political prisoner has been integrated into the national policy and fully implemented by Thailand without discrimination
- Amend the Injured Persons and Compensation and Expenses for the Accused in Criminal Cases Act B.E.2544 in order to enlarge the political prisoner's right to access to national fund for their remedy requests
- Implement all measures to ease criminal record of the political prisoner and empower them to resettle in the society

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<sup>60</sup> the Damage for the Injured Persons and Compensation and Expenses for the Accused in Criminal Cases Act B.E.2544, Article 20, available at [https://file.thailandpost.com/upload/content/2554\\_5d15d2e21326b.pdf](https://file.thailandpost.com/upload/content/2554_5d15d2e21326b.pdf) (last accessed 23 March 2021)

<sup>61</sup> Confidential interview with the political prisoners between 2018 and 2020

<sup>62</sup> Confidential interview with the political prisoners between 2018 and 2020

## ANNEX A

### List of Political Prisoners

#### 1. Somyot Prueksakasemsuk

In 2010, Somyot was convicted of defaming Thailand's monarchy by publishing 2 articles in Voice of Thaksin magazine. He was sentenced to eleven years' imprisonment for lese majeste under lese majeste offence.<sup>63</sup> After 7 years of prison, Somyot finished his sentence and was released in 2018. Somyot is currently Thailand's longest-serving lese majeste prisoner.<sup>64</sup>

Once Somyot was freed from prison, he continued his demand for a better quality of life in prisons along with democratic and constitutional reform. He also gave speeches to address the oppressive labor conditions in Thailand.

Amidst the ongoing pro-democracy protests, Somyot was prosecuted again under lese majesty and other offences following the protests in Sanam Luang and Thammasat University (The Prachan Campus) on September 19, 2020.<sup>65</sup>

On February 9, 2021, Somyot and other 7 political activists were sent to the General Attorney for acknowledging the indictment and later sent to court requesting for pre-trial detention.<sup>66</sup> The Criminal Court granted permission to detain them without limit and dismissed their bail applications for at least 5 times. At the time of submission Somyot Prueksakasemsuk is currently in custody in Bangkok Remand Prison.

#### 2. Patiwat Saraiyem (Morlam Bank)

Patiwat Saraiyaem had been accused of insulting the Thai monarchy in a drama event organised at Thammasat University in 2013 entitled "A Wolf's Bride".<sup>67</sup> Patiwat was jailed for 5 years which later reduced to 2 years and 6 months because he pleaded guilty under lese majesty offence. He was released after serving 2 years and 3 days in jail.<sup>68</sup>

Patiwat was under surveillance by the authorities and being harassed following his performance after the release. On October 19, 2020, Patiwat was arrested and prosecuted again under lese

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<sup>63</sup> "Thai magazine editor jailed for 11 years for insulting king", Independent, 23 January 2013, available at <https://www.independent.co.uk/news/world/asia/thai-magazine-editor-jailed-11-years-insulting-king-8462651.html> (last accessed 24 March 2021)

<sup>64</sup> "Thailand: Quash Editor's Conviction for 'Insulting Monarchy.'" Human Right Watch, 24 February 2017. available at <https://www.hrw.org/news/2017/02/24/thailand-quash-editors-conviction-insulting-monarchy> (last accessed 24 March 2021)

<sup>65</sup> "สถาบันกษัตริย์: สมยศ พุกกะเวสคุมขัง กับข้อหา ม.112 ครั้งที่ 2." BBC News, 1 February 2021. available at <https://www.bbc.com/thai/thailand-55691874> (last accessed 24 March 2021)

<sup>66</sup> "เปิดข้อกล่าวหาตามฟ้อง คดี "19 กันยายนทวงอำนาจคืนราษฎร."" iLaw-freedom, 10 February 2021. available at <https://freedom.ilaw.or.th/node/883> (last accessed 24 March 2021)

<sup>67</sup> "Two Thai Nationals Jailed For Insulting Royal Family In University Play." International Business Times, 23 February 2015. available at <https://www.ibtimes.com/two-thai-nationals-jailed-insulting-royal-family-university-play-1824612> (last accessed 24 March 2021)

<sup>68</sup> "Two jailed for royal slur in play." Bangkok Post, 23 February 2015. available at <https://www.bangkokpost.com/thailand/general/481556/young-man-woman-imprisoned-for-lese-majeste-during-university-play> (last accessed 24 March 2021)

majesty and other offences as a result of allegedly his participation in Sanam Luang and Thammasat University (Tha Prachan Campus) on September 19, 2020.<sup>69</sup> He had experienced the denial of bail together with Somyot Prueksakasemsuk, Jatupat Boonpattaraksa, Anon Numpa, and Parit Chiwarak.

### **3. Jatupat Boonpattaraksa (Pai Daodin)**

On December 3, 2016, Jatupat Boonpattaraksa was accused of lese majesty and was arrested for sharing a BBC Thai biography of King Vajiralongkorn on his Facebook page. During King Vajiralongkorn's reign, he was the first person to be arrested for lese majesty and he was the only person to be arrested among 2,800 people who shared the article on Facebook. After 2 years, 5 months and 7 days, Jatupat was released from prison.<sup>70</sup>

After his release, Jatupat resumed his call for justice, inequality and structure change for the people. He was apprehended numerous times, had his house raided and taken to the police station.<sup>71</sup>

Jatupat was prosecuted again with lese majeste and other offences together with other 21 persons following his speech given to the people on 19 September 2020. He was detained in the Bangkok Remand Prison since 8 March with political activists, including 'Mike' Panuphong Jadnok and Panasaya Sithijirawattanakul.

### **4. Ekkachai Hongkangwan**

Ekkachai Hongkangwan was prosecuted with lese majesty offence for selling documentary CDs produced by the Australian Broadcasting Corporation and copies of WikiLeaks documents deemed defaming to the Queen and the Prince. Ekkachai was released from prison after spending 2 years and 8 months in jail.<sup>72</sup>

Following the declaration of Severe Emergency Situation on October 15, 2020, he was accused of a severe charge under Section 110 or causing harm to the Queen's liberty and the Heir when the motorcade of them traveled past demonstrators outside Government House on October 14, 2020 afternoon. Ekkachai was released after nearly 18 days in detention on November 3, 2020.<sup>73</sup>

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<sup>69</sup> “จับ ‘หมอลำเบงกั’ ขอนแก่นพอกันที ที่หอพัก คาดคดีชุมนุม มธ.-สนามหลวง.” MATICHON ONLINE, 19 October 2020. available at [https://www.matichon.co.th/politics/news\\_2402552](https://www.matichon.co.th/politics/news_2402552) (last accessed 24 March 2021)

<sup>70</sup> “Pai Dao Din accepts human rights award at military court.” Prachatai English, 23 May 2017. available at <https://prachatai.com/english/node/7158> (last accessed 24 March 2021)

<sup>71</sup> “Thailand: Over 20 Democracy Activists Arrested.” Human Rights Watch, 13 October 2020. available at <https://www.hrw.org/news/2020/10/13/thailand-over-20-democracy-activists-arrested> (last accessed 24 March 2021)

<sup>72</sup> “Appeal Court sentences man to more than 3 years in jail for selling CDs of lèse majesté ABC documentary and Wikileaks.” Prachatai English, 13 May 2014. available at <https://prachatai.com/english/node/3961> (last accessed 24 March 2021)

<sup>73</sup> “Opinion: Thailand needs more people like Ekkachai Hongkangwan.” THAI ENQUIRER, 23 October 2020. available at <https://www.thaienquirer.com/19928/opinion-thailand-needs-more-people-like-ekkachai-hongkangwan/> (last accessed 24 March 2021)