



**FIDH - International Federation for Human Rights**  
*and its member organizations in Thailand*  
**Union for Civil Liberty (UCL)**  
*and*  
**Internet Law Reform Dialogue (iLaw)**

**Assessment of Thailand's follow-up actions for the implementation of the UN  
Human Rights Committee's recommendations**

**14 August 2018**

After reviewing the situation of civil and political rights in Thailand on 13-14 March 2017, the United Nations (UN) Human Rights Committee (CCPR) gave the Thai government a 23 March 2018 deadline to submit a follow-up report on the implementation of the recommendations made by the committee concerning three priority issues, namely: 1) The constitution and the country's legal framework; 2) Extrajudicial killings, enforced disappearances, and torture; and 3) Conditions of detention. The Thai government failed to submit its follow-up report within the deadline set by the CCPR. The report was submitted in July 2018. Regrettably, the government's report failed to satisfactorily address the three priority issues raised by the CCPR. This joint FIDH-UCL-iLaw report documents this failure and makes recommendations to the CCPR for the outcome of the follow-up review. This report also includes a recommended grade, based on the CCPR grading system.<sup>1</sup>

In addition, it must be noted that in June 2018 Thailand resumed executions after a nearly nine-year unofficial moratorium. On 18 June 2018, Theerasak Longji, 26, was executed by lethal injection at Bang Kwang Central Prison, north of Bangkok. Theerasak had been found guilty of a premeditated murder he had committed in Trang on 17 July 2012. While the use of the death penalty was not identified by the CCPR as one of the three issues to be considered in the follow-up review, this troubling development should be nonetheless regarded as an important regression in Thailand's commitment to implementing the International Covenant on Civil and Political Rights (ICCPR).

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<sup>1</sup> Based on information submitted by the state party and non-state actors, the CCPR adopts grades reflecting its analysis of the level of implementation of the recommendations included in the follow-up procedure. The CCPR's follow-up assessment criteria are as follows:

A: Reply/action largely satisfactory.

B: Reply/action partially satisfactory (B1: Substantive action taken / B2: Initial action taken).

C: Reply/action not satisfactory (C1: Actions taken do not implement the recommendation / C2: Reply not relevant to the recommendation).

D: No cooperation with the Committee (D1: No reply received within deadline or to any specific question / D2: No reply received after reminder).

E: The measures taken are contrary to the recommendations of the Committee.

## **Implementation of the recommendations made on the constitutional and legal framework (ICCPR, Article 2)**

### **RECOMMENDED GRADE: 'E'**

*“The State party should review all measures adopted under the interim Constitution of 2014, in particular under sections 44, 47 and 48, in the light of its obligations under the Covenant, and make sure that all measures to be adopted under the new draft Constitution, including section 279, will be consistent with its obligations under the Covenant, including the obligation to provide effective remedies to victims of human rights violations.”<sup>2</sup>*

We recommend that the UN Human Rights Committee (CCPR) give Thailand an ‘E’ grade on the implementation of the recommendations made on the constitutional and legal framework, as the measures taken by Thailand are contrary to the CCPR’s recommendations, and all repressive orders and announcements that are not in compliance with Thailand’s obligations under the International Covenant on Civil and Political Rights (ICCPR) remain in place.

### ***New constitution entrenches junta’s sweeping powers, immunity***

Thailand’s 2017 constitution was promulgated on 6 April 2017.<sup>3</sup> The charter grants Thailand’s ruling military junta, the National Council for Peace and Order (NCPO), sweeping and unchecked powers and immunity from persecution. Under Article 279 of the 2017 constitution, all announcements, orders, and acts of the NCPO and the Head of the NCPO already in force continue to be constitutional and lawful. The repeal or amendment of such announcements or orders can only be made by permanent laws.

In addition, Article 265 of the 2017 constitution authorizes the Head of the NCPO to continue to exercise absolute power under Article 44 of the 2014 interim constitution until a new government takes office following the next general election [See below, *Elections repeatedly delayed*]. Despite the government’s claim that the NCPO has used Article 44 “only when there is absolute necessity,”<sup>4</sup> it is apparent that NCPO Head General Prayuth Chan-ocha has continued to invoke Article 44 to issue orders related to a broad range of matters. Between 23 March 2017 and 23 May 2018, General Prayuth invoked Article 44 to issue 47 orders, bringing the total to 179 since December 2014.<sup>5</sup> In its follow-up report to the CCPR, the government also insisted that anyone is able to file a claim to the Constitutional Court if he or she believes that any law or regulation enacted under Article 44 is inconsistent with the charter’s provisions.<sup>6</sup> However, this statement deliberately ignores the fact that, to date, no legal challenge to orders issued under Article 44 before the Constitutional Court has been successful.

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<sup>2</sup> Human Rights Committee, *Concluding observations on the second periodic report of Thailand*, 25 April 2017, UN Doc. CCPR/C/THA/CO/2, Para. 8

<sup>3</sup> National Legislative Assembly, *Constitution of the Kingdom of Thailand B.E.2560*, 6 April 2017 [in Thai], <http://click.senate.go.th/wp-content/uploads/2017/06/รัฐธรรมนูญ-2560.pdf>. Prior to its promulgation, the latest version of the draft constitution – despite having been approved in a 2016 referendum – was sent to a 10-member special committee led by Constitution Drafting Committee Chairman Meechai Ruchupan for further amendments at King Maha Vajiralongkorn’s request. The amendments concern the authority and roles of the monarch.

<sup>4</sup> Thai government, *Measures Taken to Implement the Selected Recommendations of the Human Rights Committee in the Concluding Observations on the Second Periodic Report of Thailand*, July 2018

<sup>5</sup> National Council for Peace and Order [in Thai], <http://library2.parliament.go.th/giventake/ncpo.html>; iLaw, *Report on the Exercise of Power under Section 44 of the Interim Constitution of Thailand* [in Thai], <https://www.ilaw.or.th/node/3679>

<sup>6</sup> Thai government, *Measures Taken to Implement the Selected Recommendations of the Human Rights Committee in the Concluding Observations on the Second Periodic Report of Thailand*, July 2018

### ***Repressive NCPO decrees still in force and enforced***

Despite the CCPR's recommendation, none of the key NCPO decrees that are inconsistent with Thailand's obligations under the ICCPR have been repealed or brought into line with the Covenant.<sup>7</sup> On 10 January 2018, Deputy Prime Minister Wissanu Krea-ngam said that about 50 NCPO orders and announcements issued under Article 44 would be proposed to the junta-appointed National Legislative Assembly (NLA) to become laws, while the remaining decrees would remain in place until their repeal through laws, or orders issued by the Prime Minister or the Cabinet.<sup>8</sup>

Of special concern is the ongoing use of Article 12 of NCPO Order 3/2015, which bans political gatherings of more than four people and prescribes prison terms of up to six months or a 10,000-baht (about US\$320) fine, or both, for violators. Since 23 March 2017, authorities have detained or charged 151 individuals under NCPO Order 3/2015 for the exercise of their legitimate right to peaceful assembly.<sup>9</sup>

Meanwhile, the junta-appointed NLA continues to act as a rubber stamp to adopt legislation promoted by the NCPO without much debate or opposition. From 23 March 2017 to 27 July 2018, the NLA approved at least 70 pieces of legislation.<sup>10</sup> Every vote was nearly unanimous. The average approval rate of the laws among the NLA members was 98%.

In addition, the junta has yet to lift a ban on political activities through the repeal of NCPO Announcement 57/2014, which has been in place since June 2014.<sup>11</sup> On 24 December 2017, General Prayuth invoked Article 44 to issue Order 53/2017, which allowed the formation of new political parties but maintained the ban on political activities.<sup>12</sup> On 5 June 2018, in response to petitions filed separately by two political parties in January 2018, the Constitutional Court ruled that Order 53/2017 did not violate the 2017 constitution.<sup>13</sup>

### ***Junta's 20-year strategy ties the hands of future governments***

Among the negative impacts of the 2017 constitution is a provision that effectively gives the NCPO authority to determine the policies to which future governments will have to adhere. Article 65 of the constitution stipulates that the state should develop "a national strategy as the goal for sustainable development of the country" and that the determination of the goal and the period of

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<sup>7</sup> Key NCPO decrees inconsistent with Thailand's obligations under the ICCPR that are still in effect include: NCPO Announcement 57/2014 banning all political parties from holding meetings or undertaking political activities; NCPO Announcement 97/2014 banning criticism of the junta and the dissemination of information that could harm national security; NCPO Announcement 7/2014 and NCPO Order 3/2015 imposing severe restrictions on the rights to freedom of opinion and expression, and peaceful assembly; and NCPO Order 41/2016 granting the National Broadcasting and Telecommunications Commission broad and unchecked powers to shut down radio or TV stations.

<sup>8</sup> Bangkok Post, *Section 44 orders to be legislated into law*, 10 January 2018; Nation, *Some Article 44 orders to become permanent laws*, 11 January 2018

<sup>9</sup> iLaw, *List of political prisoners since the 2014 coup - Charges: Political rally of more than 5 people violates NCPO Announcement 7/2014 or Article 12 of Head of NCPO Order 3/2015*, accessed on 8 August 2018 [in Thai], <https://freedom.ilaw.or.th/politically-charged>

<sup>10</sup> National Legislative Assembly, *Status of draft legislation under consideration of the National Legislative Assembly*, accessed on 10 August 2018 [in Thai], <http://www.senate.go.th/w3c/senate/lawdraft.php>

<sup>11</sup> Reuters, *Thailand's political activity ban stays for now: PM*, 31 October 2017

<sup>12</sup> Gazette, *Order of the Head of the National Council for Peace and Order 53/2560*, 22 December 2017 [in Thai], [http://library2.parliament.go.th/giventake/content\\_ncpo/ncpo-head-order53-2560.pdf](http://library2.parliament.go.th/giventake/content_ncpo/ncpo-head-order53-2560.pdf); Nation, *Junta order raises doubts about poll in November*, 23 December 2017; Khaosod English, *Junta believes formation of new political parties*, 23 December 2017

<sup>13</sup> Bangkok Post, *Charter court upholds NCPO's order on political parties*, 5 June 2018; Nation, *Last hurdle to Thai election cleared as parties law approved*, 6 June 2018

time required to achieve it should be “in accordance with the rules and procedure prescribed by law.”

On 21 June 2018, the NLA approved the junta-drafted National Strategy Bill by a 217-0 vote, with three abstentions. The law created a National Strategy Committee (NSC), chaired by the Prime Minister, which is tasked with conceiving the country’s national strategy for the next 20 years. The strategy, which is to be reviewed by the NSC every five years, is legally binding for government agencies and officials. Failure by government agencies to implement the strategy or achieve its goals may result in officials being investigated by the National Anti-Corruption Commission (NACC).<sup>14</sup>

### ***Elections repeatedly delayed***

Since taking power in the May 2014 coup, the NCPO has repeatedly promised a general election to return the country to civilian rule, in accordance with its so-called roadmap. While Thai government officials have continued to insist that the NCPO’s roadmap be followed, they have not set a clear timeframe, and the plan to hold a general election has repeatedly been postponed.<sup>15</sup>

Since March 2017, the election timeline has been subjected to further delays in the drafting and adoption of the relevant election laws by the various junta-appointed bodies, including the NLA and the Constitution Drafting Committee (CDC).<sup>16</sup> The CDC had been primarily responsible for the drafting of these laws. On 8 October 2017, General Prayuth said that Thailand would hold a general election in November 2018, adding that the exact date would be announced in June 2018.<sup>17</sup> However, on 25 January 2018, the NLA unanimously passed the law on the election of MPs and inexplicably voted to delay its enactment until 90 days after its publication in the Gazette,<sup>18</sup> effectively postponing the election date until at least February 2019.<sup>19</sup> On 27 February 2018, General Prayuth promised to hold a general election by February 2019.<sup>20</sup> Meanwhile, the royal endorsement of the laws on the election of Senators and MPs was also delayed by the NLA’s decision to forward them to the Constitutional Court to seek a ruling over the constitutionality of minor provisions of both laws. In late May 2018, the Constitutional Court ruled that both laws were constitutional.<sup>21</sup> On 25 June 2018, Deputy Prime Minister Wissanu Krea-ngam said an election would be held by May 2019.<sup>22</sup> The absence of checks and balances and lack of transparency of the electoral process render the election subject to further possible delays.

### ***Two convicted under the 2016 Referendum Act***

Over the past year, anti-junta activists continued to be tried in relation to their campaigns in the lead-up to and during the August 2016 constitutional referendum. To date, two people have been found guilty of violating the repressive 2016 Referendum Act.

On 26 September 2017, a court in Bangkok handed down a suspended sentence of two months in prison to Piyarat Chongthep for tearing the voting ballot.<sup>23</sup>

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<sup>14</sup> Nation, *NLA passes 20-year national strategy and reform bills*, 22 June 2018

<sup>15</sup> Nation, *PM promises national election by February 2019*, 27 February 2018

<sup>16</sup> Under the 2017 constitution an election must be held 150 days after the promulgation of the four organic laws concerning the election – of the Senate, MPs, political parties, and the Election Commission.

<sup>17</sup> CNBC, *Thailand to hold election in November 2018: Prime Minister*, 10 October 2017

<sup>18</sup> Bangkok Post, *NLA backs 90 days delay in poll law*, 26 January 2018

<sup>19</sup> Bangkok Post, *Politicians cry foul over poll delay*, 26 January 2018

<sup>20</sup> Nation, *PM promises national election by February 2019*, 27 February 2018

<sup>21</sup> Bangkok Post, *Senate selection bill ruled constitutional by court*, 23 May 2018; Nation, *Constitutional Court removes another hurdle to next election*, 31 May 2018

<sup>22</sup> Reuters, *Thailand signals election could be delayed until May*, 25 June 2018

<sup>23</sup> Khaosod English, *Ballot-tearing activist gets two-month suspended sentence*, 26 September 2017

On 10 November 2017, the Ubon Ratchathani Provincial Court, Ubon Ratchathani Province, handed down a two-year suspended sentence and a 30,000-baht (US\$955) fine to Wichan Phuwihan after convicting him of violating the 2016 Referendum Act.<sup>24</sup> Wichan was arrested on 26 July 2016 for asking people at a market not to participate in the referendum.<sup>25</sup>

Four individuals have been acquitted of charges under the 2016 Referendum Act. In addition, on 29 January 2018, the Ratchaburi Provincial Court, Ratchaburi Province, dismissed a case under the 2016 Referendum Act against Prachatai journalist Taweesak Kerdpoka and anti-junta activists Pakorn Areekul, Anucha Rungmorakot, Phanuwat Songsawadchai, and Anan Loked. They were accused of distributing materials in July 2016 to persuade people to reject the constitution in the referendum. The court ruled that the prosecutor's evidence failed to prove that the materials had been distributed to the public.<sup>26</sup>

**Implementation of the recommendations made on torture and other ill-treatment, extrajudicial killings, and enforced disappearances (ICCPR, Articles 2, 6-7, 9-10, and 16)**  
**RECOMMENDED GRADE: 'C1'**

*"The State party should:*

- (a) Ensure that cases are reported and that prompt, impartial and thorough investigations are carried out into all allegations and complaints concerning the unlawful and excessive use of force by law enforcement officials and the military, including torture, enforced disappearances and extrajudicial killings, including in the context of the southern border provinces. It should also ensure that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions;*
- (b) Provide the truth about the circumstances of those crimes and, in cases of enforced disappearances, clarify the fate or whereabouts of the victims and ensure that their relatives are informed about the progress and the results of investigations;*
- (c) Ensure that the victims are provided with full reparation, including satisfaction and guarantees of non-repetition;*
- (e) Promptly set up an independent mechanism for the prevention and suppression of torture and enforced disappearances.<sup>27</sup>*

We recommend that the UN Human Rights Committee (CCPR) give Thailand a 'C1' grade on the implementation of the recommendations made on torture and other ill-treatment, extrajudicial killings, and enforced disappearances. Reports of these types of violations persist, as do reports of impunity for perpetrators due to inadequate investigations concerning these cases, contrary to Thailand's obligations under the International Covenant on Civil and Political Rights (ICCPR).

***Allegations of torture, enforced disappearances, and extrajudicial killings remain unaddressed***

Despite ongoing allegations of torture, enforced disappearances, and extrajudicial killings, the Thai government has failed to implement adequate measures to ensure that prompt, thorough, credible, and impartial investigations are conducted into these allegations, fueling a climate of impunity for these crimes.

<sup>24</sup> Khaosod English, *Charter referendum: man convicted for yelling 'don't vote'*, 10 November 2017

<sup>25</sup> Isaan Record, *Ubon court sentences 'Wichai Phuwihan' in referendum case*, 9 November 2017 [in Thai], <https://isaanrecord.com/2017/11/09/referendum-case/>

<sup>26</sup> Prachatai, *Court acquits Prachatai journalists, pro-democracy activists*, 19 January 2018

<sup>27</sup> Human Rights Committee, *Concluding observations on the second periodic report of Thailand*, 25 April 2017, UN Doc. CCPR/C/THA/CO/2, Para. 22

As of July 2017, the UN Working Group on Enforced or Involuntary Disappearances (WGEID) had recorded 82 unresolved cases of enforced disappearance in Thailand.<sup>28</sup> On 17 November 2017, the Thai government said it would ask the WGEID to remove six of the cases from its database, because it claimed the authorities had determined that some of the victims were dead, while others were still alive.<sup>29</sup> In July 2018, the government reported that four of the 82 cases had been resolved, with two people found to have died of natural causes and one currently serving a prison term.<sup>30</sup>

Enforced disappearance, as defined in international standards, is still not recognized as a criminal offense in Thailand's legal system. A draft Prevention and Suppression of Torture and Enforced Disappearance Act was completed after years of efforts by government authorities in consultation with non-governmental organizations and civil society.<sup>31</sup> While the most recent version of the draft Act contained certain shortcomings, it marked a positive step towards preventing torture, ill-treatment, and enforced disappearances in accordance with Thailand's international obligations.<sup>32</sup> On 28 February 2017, the junta-appointed National Legislative Assembly (NLA) indefinitely suspended the adoption of the draft Act.<sup>33</sup> According to the Thai government, the Ministry of Justice is currently working to submit a revised draft to the Cabinet by September 2018.<sup>34</sup>

On 9 January 2012, Thailand signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). A resolution in favor of ratifying the ICPPED was unanimously approved by the NLA on 10 March 2017.<sup>35</sup> However, the Thai government has yet to deposit the treaty with the UN Secretary-General, as required, or set a clear time frame to do so.

On 23 May 2017, the government established the Committee to Receive Complaints and Investigate Allegations of Torture and Enforced Disappearance.<sup>36</sup> The Committee, chaired by the Justice Minister, is mandated to: 1) receive complaints; 2) perform fact-finding; 3) monitor; 4) provide assistance and remedies to victims; and 5) protect individuals who have been affected by acts of torture or enforced disappearance.<sup>37</sup> Several subcommittees were also established, tasked with monitoring and examining, preventing and raising awareness, and rehabilitating the victims of torture and enforced disappearance.<sup>38</sup> However, to date, the Committee has failed to undertake any concrete and effective actions to fulfill its mandate.

Investigations into two separate cases of members of ethnic minorities killed by Thai Army soldiers have failed to produce any significant findings. In both cases, perpetrators are yet to be held accountable, despite the fact that the killings occurred over one year ago. On 15 February 2017, a Thai Army soldier killed 32-year-old ethnic Lisu Abe Sae Moo in Chiang Dao Sub-District, Chiang Mai Province. Military officials claimed that the soldier had fired in self-defense as Abe had drugs in his

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<sup>28</sup> Human Rights Council, 36th session, *Report of the Working Group on Enforced or Involuntary Disappearances*, 31 July 2017, UN Doc. A/HRC/36/39

<sup>29</sup> Bangkok Post, *Govt seeks change to UN missing list*, 18 November 2017

<sup>30</sup> Bangkok Post, *3 panels to oversee rights protection*, 12 July 2018

<sup>31</sup> FIDH, *Letter to the government on the International Day of the Victims of Enforced Disappearances*, 30 August 2017

<sup>32</sup> FIDH, *Letter to the government on the International Day of the Victims of Enforced Disappearances*, 30 August 2017

<sup>33</sup> Prachatai, *Junta lawmakers drop bill criminalizing torture, enforced disappearance*, 1 March 2017

<sup>34</sup> Thai government, *Measures Taken to Implement the Selected Recommendations of the Human Rights Committee in the Concluding Observations on the Second Periodic Report of Thailand*, July 2018

<sup>35</sup> Thairath, *NLA approved Enforced Disappearance Convention, imposed severe criminal sanctions*, 10 March 2017 [in Thai], <https://www.thairath.co.th/content/880637>

<sup>36</sup> Komchudluek, *Thailand not ignoring "enforced disappearances, tortures" - 82 people disappeared*, 26 June 2017 [in Thai], <http://www.komchadluek.net/news/regional/284642>

<sup>37</sup> Ministry of Foreign Affairs of the Kingdom of Thailand, *Press Release: Thailand's progress on prevention and suppression of torture and enforced disappearance*, 30 June 2017

<sup>38</sup> Thai government, *Justice Minister discusses measures to address complaints of torture and enforced disappearance*, 26 June 2017 [in Thai], <http://www.thaigov.go.th/news/contents/details/4793>

possession and had attempted to shoot at them and throw a grenade.<sup>39</sup> On 26 July 2018, the Chiang Mai Provincial Court ruled that Abe's cause of death had been the result of a bullet fired by a Thai Army soldier.<sup>40</sup> The inquest into Abe's death did not determine whether the heroin, ammunition, and grenade found at the crime scene belonged to Abe, or whether the military officer had fired as a legitimate act of self-defense.<sup>41</sup> To date, no one has been found guilty for his murder and it is unclear whether the military officer will be prosecuted.<sup>42</sup>

On 17 March 2017, a Thai Army soldier fatally shot 17-year-old ethnic Lahu activist Chaiyaphum Pasae after the car he was in was stopped at a military checkpoint in Chiang Dao Sub-District, Chiang Mai Province.<sup>43</sup> Soldiers claimed they found 2,800 methamphetamine pills in the car and accused Chaiyaphum of using a knife and a grenade to try to escape.<sup>44</sup> Eyewitnesses disputed the military's account and said soldiers physically assaulted Chaiyaphum and then shot him dead when he tried to run away.<sup>45</sup> No progress has been made in the investigation into Chaiyaphum's killing and both the military and police have refused to make CCTV footage of the incident public.<sup>46</sup>

Military officials have also continued to file defamation lawsuits against those reporting on torture. On 9 February 2018, Internal Security Operations Command (ISOC) Region 4 officers filed a civil defamation complaint against online Thai media outlet *Manager Online*, over its publication of an article on 5 February, which reported on the torture and ill-treatment of detainees by Thai Army soldiers in Thailand's Southern Border Provinces.<sup>47</sup>

On 14 February 2018, ISOC Region 4 officers also filed criminal and civil defamation complaints against *Patani Human Rights Organization (HAP)* founder Ismae Teh.<sup>48</sup> The charges were filed after Ismae recounted his experience of torture and ill-treatment while detained in military custody in 2008, on the *Thai Public Broadcasting Service (PBS)* program 'Policy By People' that aired on 5 February.<sup>49</sup> During the program, he said military interrogators kicked, electrocuted, and beat him with a stick until he passed out, in order to force him to confess that he was involved in a separatist Muslim insurgency.<sup>50</sup> The defamation charges against Ismae were filed despite the fact that on 19 October 2016, the Supreme Administrative Court had already found that Ismae had been "physically assaulted" during his detention and ordered the Army and the Defense Ministry to pay him 305,000

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<sup>39</sup> Nation, 'We want justice, not money', 16 July 2018

<sup>40</sup> Nation, *Court rules Lisu teen was shot dead by military officers*, 27 July 2018

<sup>41</sup> Nation, *Court rules Lisu teen was shot dead by military officers*, 27 July 2018

<sup>42</sup> Nation, *Court rules Lisu teen was shot dead by military officers*, 27 July 2018

<sup>43</sup> AFP, *Thai soldier who killed activist to face charge: police*, 22 March 2017

<sup>44</sup> Nation, *CCTV shows Lahu teen resisting: Army*, 24 March 2017

<sup>45</sup> Khaosod English, *Witness Says Soldiers Shot Lahu Activist as He Fled Beating*, 23 March 2017; Nation, *Lawyer to push for CCTV evidence over killing of teen Lahu activist*, 26 January 2018

<sup>46</sup> Nation, *Lawyer to push for CCTV evidence over killing of teen Lahu activist*, 26 January 2018; Nation, *Lahu villagers complain of military oppression*, 18 March 2018

<sup>47</sup> Manager Online, *Share! Former suspects reveal torture while in military custody*, 5 February 2018 [in Thai], <https://mgronline.com/south/detail/9610000011916>; Prachatai, *Army sues Manager Online after torture allegation to protect integrity of soldiers*, 16 February 2018 [in Thai], <https://www.prachatai.com/journal/2018/02/75456>

<sup>48</sup> Human Rights Watch, *Thailand: Drop Cases Against Torture Victim*, 15 February 2018; International Commission of Jurists, *Thailand: immediately stop criminal defamation complaint against torture victim*, 15 February 2018

<sup>49</sup> Thai PBS, *Policy By People: Law needed to stop torture committed by officers*, 5 February 2018 [in Thai], <https://www.youtube.com/watch?v=JaNsOqR6AbA>; Human Rights Watch, *Thailand: Drop Cases Against Torture Victim*, 15 February 2018; International Commission of Jurists, *Thailand: immediately stop criminal defamation complaint against torture victim*, 15 February 2018

<sup>50</sup> Thai PBS, *Policy By People: Law needed to stop torture committed by officers*, 5 February 2018 [in Thai], <https://www.youtube.com/watch?v=JaNsOqR6AbA>

baht (US\$9,750) in compensation.<sup>51</sup> However, no one has been prosecuted for Ismae's torture and ill-treatment.<sup>52</sup>

### ***Torture and ill-treatment lead to deaths in custody***

Allegations of torture and ill-treatment of detainees by law enforcement officials continue to be reported in places of detention across the country. Deaths in police and military custody as a result of torture also continue to be documented. Since March 2017, at least eight cases of custodial deaths have been documented in various places of detention, including prisons and military detention facilities.<sup>53</sup> Thai authorities have regularly denied any involvement in these deaths and routinely failed to conduct thorough, impartial, and credible investigations to hold those responsible accountable.

On 1 April 2017, Suriya Supharak, convicted for drug-related offences, died while imprisoned in Takua Pa District Prison, Phang Nga Province. Prison staff said he died from heatstroke after he was punished for fighting with another inmate. The result of the autopsy revealed that he had three broken ribs, a ruptured liver, swollen brain, and wounds from being hit by a blunt object all over his body, suggesting that he was physically assaulted to death.<sup>54</sup> Suriya's family said that he had earlier told them that he was regularly beaten by a prison officer who is an ex-soldier, adding that the officer had attempted to contact them to come to an agreement, but they refused as they planned to file a complaint against him.<sup>55</sup> However, the family later said that they had reached a settlement with the Army, without disclosing any details.<sup>56</sup>

In addition, deaths of military cadets or conscripts from torture continued to be reported in Thailand. Since March 2017, three army conscripts have died while undergoing extreme disciplinary punishment that amounted to torture. Despite the 1933 Military Disciplinary Act, which explicitly forbids corporal punishment, such practices are known to exist within the Thai military.<sup>57</sup> However, the Thai Army has consistently denied any wrongdoing by military officers under their command and often insisted that the deaths were the result of pre-existing health conditions.<sup>58</sup> No military officer has been charged or criminally sanctioned due to the lack of prompt and impartial investigations conducted, contrary to Thailand's obligations under the ICCPR.

The case of Phakhaphong Tanyakan, a 19-year-old cadet from the Armed Forces Academies Preparatory School in Nakhon Nayok Province, exemplifies this trend. On 17 October 2017, Phakhaphong died abruptly after returning to the school from leave. His family received a death

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<sup>51</sup> International Commission of Jurists, *Thailand: immediately stop criminal defamation complaint against torture victim*, 15 February 2018

<sup>52</sup> International Commission of Jurists, *Thailand: immediately stop criminal defamation complaint against torture victim*, 15 February 2018

<sup>53</sup> This figure does not include immigration detention facilities, for which figures are largely unavailable.

<sup>54</sup> Khaosod, *Inmate mysteriously died in prison, officials claim to be from heatstroke, father disbelieves because of bruises*, 6 April 2017 [in Thai], [https://www.khaosod.co.th/breaking-news/news\\_286587](https://www.khaosod.co.th/breaking-news/news_286587); Thai PBS, *Another death in prison, family believes to be murder, prison officials claim because of heatstroke*, 6 April 2017 [in Thai], <http://news.thaipbs.or.th/content/261440>

<sup>55</sup> Prachatai, *Inmate allegedly beaten to death by prison staff*, 10 April 2017

<sup>56</sup> Workpoint, *Hemorrhage found in the brain of inmate died in Takua Pa Prison*, 19 April 2017 [in Thai], <http://www.workpointtv.com/news/29594>

<sup>57</sup> Gazette, *Military Disciplinary Act B.E.2476* [in Thai], <http://apthca.krisdika.go.th/Naturesig/CheckSig?whichLaw=law2&folderName=%C721&lawPath=%C721-20-9999-update>; Matichon, *Prawit says cadets must be prepared to be disciplined, insisting "Maey" did not die from punishment*, 22 November 2017 [in Thai], <https://www.matichon.co.th/news/739928>

<sup>58</sup> Bangkok Post, *Panel insists cadet died of heart attack*, 16 December 2017; Manager Online, *Army conscript died in Thep Satri Si Sunthorn Camp, Mother suspicious of autopsy result pointing 'heart failure', despite bruises on body*, 12 November 2017 [in Thai], <https://mgronline.com/crime/detail/9600000114360>

certificate from the school, indicating Phakhaphong's cause of death as "sudden cardiac arrest."<sup>59</sup> However, the physician who conducted the autopsy said that Phakhaphong's ribs and both of his collarbones were broken, possibly due to blunt trauma.<sup>60</sup> A fact-finding committee consisting of 11 military officers was set up to conduct an investigation into his death.<sup>61</sup> The committee confirmed that Phakhaphong had been inappropriately punished by other senior students, but insisted that he had died of a health condition.<sup>62</sup> On 22 November 2017, in response to Phakhaphong's death, Defense Minister Prawit Wongsuwan admitted that excessive physical punishment was part of military service and revealed that he also had been subjected to such treatment in the Army. When asked by journalists how similar incidents could be avoided in the future, his answer was "Don't sign up."<sup>63</sup>

### ***Use of military detention facilities increases risk of torture, enforced disappearance***

Military bases continue to be used to arbitrarily detain civilians, and do not have any effective safeguards to prevent human rights violations. Human rights defenders and political dissidents, including in the context of the conflict in Thailand's Southern Border Provinces, have continued to be subjected to enforced disappearance and torture in detention by military personnel.

On 29 April 2017, human rights lawyer Prawet Prapanukul was arrested at his home in Bangkok for allegedly violating Article 112 of the Criminal Code (*lèse-majesté*).<sup>64</sup> His fate and whereabouts were unknown until 3 May 2017 when he was brought to the Bangkok Criminal Court by police, who then filed a petition to detain him on charges of sedition (Article 116 of the Criminal Code) and *lèse-majesté*.<sup>65</sup> It was later revealed that Prawet had then been taken by military personnel to the Nakhon Chaisri temporary detention facility inside the 11th Army Circle base in Bangkok, where he had been detained incommunicado for five days.<sup>66</sup> On 27 June 2018, the Bangkok Criminal Court convicted Prawet on three counts of sedition for material he had posted on Facebook about the 1932 revolution in Thailand, and sentenced him to one year and four months in prison. The verdict dropped any mention of the 10 *lèse-majesté* charges against him.<sup>67</sup>

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<sup>59</sup> Prachatai, *Internal organs of cadet who died at military academy disappear*, 21 November 2017

<sup>60</sup> Prachatai, *Internal organs of cadet who died at military academy disappear*, 21 November 2017

<sup>61</sup> Prachatai, *List of committee members to investigate the death of military academy student Pakapong*, 26 November 2017 [in Thai], <https://prachatai.com/journal/2017/11/74305>

<sup>62</sup> Nation, *Military absolves its own over the death of cadet*, 16 December 2017; Nation, *Death cadet's family to pursue legal action*, 24 January 2018

<sup>63</sup> Khaosod English, *Army admit keeping dead cadet's organ*, 22 November 2017; Matichon, *Prawit says cadets must be prepared to be disciplined, insisting "Maey" did not die from punishment*, 22 November 2017 [in Thai], <https://www.matichon.co.th/news/739928>

<sup>64</sup> Human Rights Watch, *Thailand: Rights lawyer feared 'disappeared'*, 2 May 2017

<sup>65</sup> Prachatai, *Human rights lawyer Prawet found, with 5 other suspects, after soldiers handed them over to the police for custody under Article 112*, 3 May 2017 [in Thai], <https://prachatai.com/journal/2017/05/71314>

<sup>66</sup> Thai Lawyers for Human Rights, *Human rights lawyer Prawet on a hunger strike in 11th Army Circle base – court denied bail, citing flight risk*, 4 May 2017 [in Thai], <http://www.tlhr2014.com/th/?p=4194>

<sup>67</sup> AP, *Rights lawyer gets 16 months' prison for Facebook post*, 27 June 2018; Khaosod English, *Lawyer Goes to Jail For Sedition, Cleared of Lese Majeste*, 27 June 2018

**Implementation of the recommendations made on conditions of detention (ICCPR, Articles 7 and 10)**  
**RECOMMENDED GRADE: 'C1'**

*"The State party should continue to strengthen its efforts to improve conditions of detention by taking practical measures to reduce overcrowding, particularly by promoting alternatives to detention. It should also increase efforts to guarantee the right of detainees to be treated with humanity and dignity and ensure that conditions of detention in all of the country's prisons are compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)."*<sup>68</sup>

We recommend that the UN Human Rights Committee (CCPR) give Thailand a 'C1' grade on the implementation of the recommendations made on conditions of detention, as Thailand has failed to take tangible steps to reduce overcrowding, guarantee that detainees are treated with humanity and dignity, or ensure that conditions of detention in all Thai prisons are in line with international standards, as recommended by the CCPR.

***Overcrowding persists as prison population reaches an all-time high***

High levels of overcrowding remain a persistent problem in Thai prisons, with the number of prisoners in Thailand having steadily increased since its review by the Human Rights Committee (CCPR) in March 2017. In August 2018, Thailand's prison population reached an all-time high of 359,508 inmates (311,950 men and 47,558 women) – a 25% increase since March 2017.<sup>69</sup> Thailand currently has the world's sixth highest prison population and the fifth highest incarceration rate.<sup>70</sup>

Aside from the granting of royal amnesties over recent years, no other effective measures have been adopted to reduce the prison population. The vast majority of prisoners (270,720 inmates or 75%) remain jailed for drug-related crimes.<sup>71</sup> Amendments made to the 1979 Narcotics Act, which came into force on 16 January 2017, reduced prison sentences for only some drug-related crimes.<sup>72</sup> In addition, the revisions to the Narcotics Act did not abolish the death penalty for drug-related offenses, and Thai courts continue to impose death sentences, especially for crimes involving drugs.<sup>73</sup> As of April 2018, there were 517 prisoners (415 men and 102 women) under death sentence – many of whom (48% of the men and 93% of the women) had been found guilty of drug-related offenses.<sup>74</sup>

On 1 March 2018, the Office of the Judiciary and the Department of Probation under the Ministry of Justice launched a pilot project in 23 courts to help reduce overcrowding. The pilot project allows

<sup>68</sup> Human Rights Committee, *Concluding observations on the second periodic report of Thailand*, 25 April 2017, UN Doc. CCPR/C/THA/CO/2, Para. 34

<sup>69</sup> Department of Corrections, *Statistics of incarcerated persons nationwide*, 1 August 2018 [in Thai], [http://www.correct.go.th/rt103pdf/report\\_result.php?date=2018-08-01&report=](http://www.correct.go.th/rt103pdf/report_result.php?date=2018-08-01&report=)

<sup>70</sup> According to the World Prison Brief, Institute for Criminal Policy Research's Highest to Lowest – Prison Population Rate ranking of 223 territories, based on July 2018 data for Thailand. World Prison Brief, *Institute for Criminal Policy Research, Highest to Lowest – Prison Population Total*, accessed on 7 August 2018, [http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All); World Prison Brief, *Institute for Criminal Policy Research, Highest to Lowest – Prison Population Rate*, accessed on 7 August 2018, [http://www.prisonstudies.org/highest-to-lowest/prison\\_population\\_rate?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All)

<sup>71</sup> Department of Corrections, *Statistics of incarcerated persons under Narcotics Act nationwide*, 1 August 2018 [in Thai], [http://www.correct.go.th/rt103pdf/report\\_result.php?date=2018-08-01&report=drug](http://www.correct.go.th/rt103pdf/report_result.php?date=2018-08-01&report=drug)

<sup>72</sup> Gazette, *Narcotics Act (the 6th edition) 2017*, 15 January 2017 [in Thai], [http://www.jla.coj.go.th/doc/data/jla/jla\\_1498720502.pdf](http://www.jla.coj.go.th/doc/data/jla/jla_1498720502.pdf)

<sup>73</sup> Articles 65, 66, and 93 of the amended Narcotics Act.

<sup>74</sup> Department of Corrections, *Statistics of prisoners under death sentence*, 30 April 2018 [in Thai] [https://drive.google.com/file/d/1lBYnAyy\\_e2MuwbN162ReiKSsfzXhMeZY/view](https://drive.google.com/file/d/1lBYnAyy_e2MuwbN162ReiKSsfzXhMeZY/view)

these courts to issue electronic monitoring ankle devices to suspects who cannot afford bail and who are not alleged to have committed any serious offenses. A total of 5,000 electronic monitoring ankle devices were distributed to the 23 courts participating in the project prior to its launch.<sup>75</sup> However, electronic monitoring ankle devices could only have a limited impact since pre-trial detainees only account for about 18% of the total prison population, and not all pre-trial detainees would be eligible.<sup>76</sup> On 1 August 2018, primary court judge under the Office of the President of the Supreme Court Punnapat Mahaleetrakul said that only 1,884 of the 5,000 electronic monitoring devices had been put to use. He also said that as of 31 July 2018, 49 offenders on whom the device was being trialed had disconnected the device, leading to the re-arrest of 18 individuals.<sup>77</sup>

Overcrowding in Thai prisons is also exacerbated by high reoffending rates, which underscores the Thai prison system's failure to rehabilitate inmates. About 17% of inmates released from prison recommit crimes within their first year. The percentage increases to 22% and 27% in the following years.<sup>78</sup> On 6 January 2018, the Ministry of Justice announced it planned to cut the number of repeat offenders by 10% over the next three years by using 'big data' from the national criminal record database to help conduct an analysis of the causes of reoffending.<sup>79</sup>

Despite an initiative by the Department of Corrections and the Thailand Institute of Justice (TIJ) to bring prison conditions in line with international standards [See below, *Prisoners still treated without humanity and dignity*], high levels of overcrowding remain a persistent problem. Ten so-called 'model prisons' reported to have successfully implemented the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the 'Bangkok Rules') remain hugely overcrowded.<sup>80</sup> According to Department of Corrections statistics, in nine of the 10 'model prisons,' the number of women prisoners had increased since March 2017.<sup>81</sup> As of 1 August 2018, the occupancy levels in all 10 'model prisons' remained high; the lowest occupancy level of 185% was in Chiang Mai Women's Correctional Institution, while the peak occupancy level was 465% in Fang District Prison, Chiang Mai Province.<sup>82</sup> This calculation of the occupancy level is based on a standard mandated by the Department of Corrections to provide a surface area of 2.25m<sup>2</sup> per prisoner.

### ***Prisoners still treated without humanity and dignity***

The Thai government has made limited efforts to improve prison conditions, which remain well below international standards.

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<sup>75</sup> Bangkok Post, *Packed prisons spur ankle bracelet trial*, 28 February 2018; Nation, *Ankle bracelets being tested for non-serious crimes in 23-court study*, 4 March 2018

<sup>76</sup> Department of Corrections, *Statistics of incarcerated persons nationwide*, 1 August 2018 [in Thai], [http://www.correct.go.th/rt103pdf/report\\_result.php?date=2018-08-01&report=](http://www.correct.go.th/rt103pdf/report_result.php?date=2018-08-01&report=)

<sup>77</sup> Nation, *49 offenders remove monitoring devices to jump bail*, 1 August 2018

<sup>78</sup> Bangkok Post, *Justice Ministry sets goals to slash number of reoffenders*, 6 January 2018

<sup>79</sup> Bangkok Post, *Justice Ministry sets goals to slash number of reoffenders*, 6 January 2018

<sup>80</sup> Thailand Institute of Justice, *Fostering Rehabilitation and Reintegration*, 21 December 2017

<sup>81</sup> Department of Corrections, *Statistics of incarcerated persons nationwide*, 1 March 2017 [in Thai], <http://www.correct.go.th/stat102/display/result.php?date=2017-03-01&Submit=%B5%A1%C5%A7>; Department of Corrections, *Statistics of incarcerated persons nationwide*, 1 August 2018 [in Thai], [http://www.correct.go.th/rt103pdf/report\\_result.php?date=2018-08-01&report=](http://www.correct.go.th/rt103pdf/report_result.php?date=2018-08-01&report=)

<sup>82</sup> Department of Corrections statistics for these 10 prisons show that the prisons are operating with a prison population of more than the intended capacity. Occupancy levels in descending order are as follows: Fang District Prison: 465%; Uthai Thani Provincial Prison: 457%; Phra Nakon Si Ayutthaya Provincial Prison: 299%; Thanya Buri Women's Penitentiary (Special Women's Correctional Institution): 277%; Tak Central Prison: 271%; Phitsanulok Women's Correctional Institution: 249%; Chonburi Women's Correctional Institution: 247%; Samut Sakhon Central Prison: 207%; Chiang Rai Central Prison: 198%; and Chiang Mai Women's Correctional Institution: 185%.

In July 2017, the Department of Corrections, in cooperation with the TIJ, launched a one-year project to bring Thonburi Remand Prison in Bangkok into line with the UN Standard Minimum Rules for the Treatment of Prisoners (also known as the ‘Nelson Mandela Rules’).<sup>83</sup> Earlier, in 2015, a project to implement the Bangkok Rules was initiated in six women’s prisons across the country.<sup>84</sup> According to the TIJ, as of December 2017, 10 women’s prisons across the country had successfully implemented the Bangkok Rules.<sup>85</sup> However, this claim could not be independently verified by FIDH and UCL and there is no indication that conditions have improved in the overwhelming majority of Thai prisons since March 2017. Between April and August 2018, UCL was allowed to visit eight of the 10 women’s ‘model prisons,’ but controls and restrictions placed on its representatives by prison staff during the visits made it impossible to accurately assess many aspects related to conditions of detention.

Some incidents have raised concerns over the seriously inadequate detention conditions, as well as the neglect of prisoners by prison authorities, and their failure to conduct thorough and impartial investigations into deaths in custody [See above, *Torture and ill-treatment lead to deaths in custody*]. On 13 December 2017, it was reported that more than 100 inmates in Kantharak Prison, Si Sa Ket Province, had suffered from muscle weakness, dizziness, and vomiting.<sup>86</sup> Health officials later reported the ailments to be the result of severe vitamin B1 deficiency and contaminated food and water.<sup>87</sup> Two prisoners were also found dead in their cells over the same period, on 7 and 12 December 2017.<sup>88</sup>

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<sup>83</sup> Thailand Institute of Justice, *Launch Event: The Pilot Implementation of the Mandela Rules*, 18 July 2017

<sup>84</sup> Thailand Institute of Justice, *The Training on the Management of Women Prisoners*, 22 August 2017

<sup>85</sup> The 10 women’s prisons are: Uthai Thani Provincial Prison, Phra Nakon Si Ayutthaya Provincial Prison, Chiang Mai Women’s Correctional Institution, Thanya Buri Women’s Penitentiary (Special Women’s Correctional Institution), Chonburi Women’s Correctional Institution, Samut Sakhon Central Prison, Chiang Rai Central Prison, Fang District Prison, Tak Central Prison, and Phitsanulok Women’s Correctional Institution. Thailand Institute of Justice, *Fostering Rehabilitation and Reintegration*, 21 December 2017

<sup>86</sup> BBC Thai, *Department of Corrections Director claims Thai prisons meet ‘standards’ after 2 prisoners died in Si Sa Ket Prison and over a hundred fell ill*, 14 December 2017 [in Thai], <http://www.bbc.com/thai/42351687>; Manager Online, *Families visit prisoners in Kantharak Prison after many fell sick and 2 died, doctors continue to treat sick prisoners in prison*, 14 December 2017 [in Thai], <https://mgronline.com/local/detail/9600000125975>

<sup>87</sup> BBC Thai, *Department of Corrections Director claims Thai prisons meet ‘standards’ after 2 prisoners died in Si Sa Ket Prison and over a hundred fell ill*, 14 December 2017 [in Thai], <http://www.bbc.com/thai/42351687>

<sup>88</sup> Manager Online, *Families visit prisoners in Kantharak Prison after many fell sick and 2 died, doctors continue to treat sick prisoners in prison*, 14 December 2017 [in Thai], <https://mgronline.com/local/detail/9600000125975>