

THAILAND

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## Part 1: Overview of Thailand

### A. Country Background

| Thailand Facts                       |   |
|--------------------------------------|---|
| Geographical size                    | 513,000 sq km   |
| Population                           | 66.18 million <sup>1</sup>  |
| Ethnic breakdown                     | Main ethnic groups:<br>Tai, Thai, Thai-Laos and Chinese-Thai (of Chinese descent) – 91.5%<br>Other (Malay, Kamber, other ethnic minorities) – 8.5%  |
| Official language                    | Thai  |
| Literacy rate<br>(aged 15 and above) | 96.7% <sup>2</sup>  |
| Life expectancy                      | 74.6 <sup>3</sup>   |
| GDP                                  | US\$444.22 billion (per capita US\$6,593) <sup>4</sup>  |
| Government                           | Since 1932, mostly a constitutional monarchy and parliamentary democracy until the 2014 military coup. The country is now run by the National Council for Peace and Order (NCPO). No clear prospect of a return to civilian rule exists although the NCPO announced general elections will be held after the coronation of King Rama X (date TBA). Elections of local administrations have also been put on hold. |
| Political and social situation       | The NCPO exercises absolute power via a series of orders that bypass regular laws and regulations. It strictly controls freedom of expression, association, and assembly, and limits public participation in policy-making. Dissidents or critics face judicial harassment and possible severe punishment.  |

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<sup>1</sup> Data from 2018. Department of Public Administration, Official Statistics Registration System, 2018, available at [http://stat.dopa.go.th/stat/statnew/upstat\\_age\\_disp.php](http://stat.dopa.go.th/stat/statnew/upstat_age_disp.php), assessed on 25 February 2018.

<sup>2</sup> Data from 2015. *Human Development Report 2016*, New York: United Nations Development Program (UNDP), 2016, at 231.

<sup>3</sup> Data from 2015. UNDP (see note 2 above), at 199.

<sup>4</sup> Data from 2017. 'GDP per capita: Thailand' The World Bank, available at [https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=TH&year\\_high\\_desc=false](https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=TH&year_high_desc=false), assessed on 22 July 2018.

Thailand is a mainland Southeast Asian country which borders Myanmar to the west, Laos and Cambodia to the east, and Malaysia to the south. In December 2017, the population was 66,188,503. The majority of the population hails from the Tai ethnic group and is Buddhist, but in the southern areas of Yala, Pattani, and Narathiwat provinces, and some districts of Song Khla province, 71% of the 3.7 million population is Malay Muslim. Thailand is also home to more than 50 other ethnic minorities totalling 9.68% of the population.

Thailand is categorised fairly highly (87 out of 188 countries) in the United Nations Development Programme's (UNDP) 'Human Development Index 2016.' As such, Thai life expectancy at birth stands at 74.6 years, with an average of 10.5 infant mortalities per 1,000 live births, and 20 maternal mortalities per 100,000 live births. Moreover, the literacy rate among adults (aged 15 and older) stands at an impressive 96.7% with no significant difference between the genders.<sup>5</sup> In terms of economic development, Thailand stands firmly in the upper middle-income level – its GDP increased 3.6% in 2017 and now stands at US\$455.221 billion.<sup>6</sup>

### *System of governance*

Thailand is a constitutional monarchy with the monarch as head of state. Prior to 2014, power was exercised by a bicameral National Assembly, the Council of Ministers, and the courts in accordance with the 2007 Constitution. Since May 2014 when the military staged a coup d'état, however, Thailand has been under the military rule of an organization called the National Council for Peace and Order (NCPO) which controls the country's administrative affairs. It appointed the National Legislative Assembly (NLA) comprising 250 members, mainly from the military and civil services, to act as a legislative body in lieu of Parliament and the Senate Houses. In addition, the NCPO suspended all elections of local representatives at the sub-district, district, municipal, and provincial levels until further notice. New members of local representative councils are appointed by a Selection Committee comprising of high level provincial officials from the Ministry of Interior.<sup>7</sup>

### *Political and social situation*

The NCPO governs the country with minimal public participation. It strictly controls freedom of expression and rights to assembly, in particular those critical of the government or demanding democracy. Currently, with the junta still in full control of the government, there seems little prospect of the country returning to representative democracy as the NCPO's proposed roadmap towards a new general election has been

<sup>5</sup> 'Thailand human development indicators' UNDP Human Development Reports, 2017, available at <http://hdr.undp.org/en/countries/profiles/THA>, assessed on 2 February 2018.

<sup>6</sup> 'Thailand' The World Bank, available at [https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=TH&year\\_high\\_desc=false](https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=TH&year_high_desc=false), assessed on 22 June 2018.

<sup>7</sup> Head of NCPO Order No 22/2559 on the process to temporarily acquire members of local representative councils in case of a dissolved local council, 4 May 2016, para 2.

constantly postponed. The 2017 Constitution that was drafted under strict control of the NCPO also paves the way for the military to remain influential in Thai politics for years to come.

### ***B. International Human Rights Commitments and Obligations***

Despite the restrictions it places on its people, Thailand is doing relatively well in terms of international human rights commitments, having ratified most of the key international human rights treaties (see Table 1 below).

**Table 1: Ratification Status of International Instruments – Thailand<sup>8</sup>**

| Treaty  | Signature Date | Ratification Date, Accession (a), Succession (d) Date |
|---|----------------|---|
| Convention against Torture and Other Cruel Inhuman or Degrading Punishment (CAT)  |                | 2 Oct 2007 (a)  |
| Optional Protocol of the Convention against Torture<br>International Covenant on Civil and Political Rights (ICCPR)               |                | 29 Oct 1996 (a)                                       |
| Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty |                |   |
| Convention for the Protection of All Persons from Enforced Disappearance (CED)  | 9 Jan 2012     |   |
| Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)  |                | 9 Aug 1985 (a)  |
| International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)   |                | 28 Jan 2003 (a)                                       |
| International Covenant on Economic, Social and Cultural Rights (ICESCR)   |                | 5 Sep 1999 (a)  |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)              |                |   |
| Convention on the Rights of the Child (CRC)   |                | 27 Mar 1992 (a)                                       |
| Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict                   |                | 27 Feb 2006 (a)                                       |
| Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography  |                | 11 Jan 2006 (a)                                       |

<sup>8</sup> 'Ratification status for Thailand' United Nations Human Rights Office of the High Commissioner, available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx), accessed on 2 June 2018.

| Treaty   | Signature Date | Ratification Date, Accession (a), Succession (d) Date |
|--|----------------|---|
| Convention on the Rights of Persons with Disabilities (CRPD) | 30 Mar 2007    | 29 Jul 2008   |

Several laws and amendments have been introduced into the country's legal system to ensure compliance with international laws and standards, including:

- Name Act (2005): grants married women the right to choose a family name instead of being obligated to use their husband's family name
- Domestic Violence Victim Protection Act (2007)
- Persons with Disabilities Empowerment Act (2007)
- Prevention and Suppression of Human Trafficking Act (2008)
- Female Title Act (2008): allows a married or divorced woman to choose to use the title 'Miss' or 'Mrs' as desired
- Civil Registration Act No 2 (2008): allows all persons born in Thailand to be registered, irrespective of the origin or status of their parents
- Civil Code amendments: improves criminal justice practices
- Gender Equality Act (2015): "unfair gender discrimination" defined on two grounds (sex by birth (female/male), or the apparent sex of a person which may differ from his/her sex by birth). Discrimination in the name of national security or to ensure compliance with religious principles is permitted under s.17. The Act establishes a Gender-Based Discrimination Adjudication Commission to receive complaints from alleged victims and may order remedies and compensation if it deems discrimination to have occurred, or it may submit a law for constitutional review.

Thailand signed the Convention for the Protection of All Persons from Enforced Disappearance in January 2012 but despite the Cabinet approving the Ministry of Justice's proposal to ratify it in May 2016, has yet to actually ratify it as of July 2018, claiming the incompatibility of its legal system.<sup>9</sup> The National Legislative Assembly rejected the draft Torture and Enforced Disappearances Prevention and Suppression Bill, a legal tool proposed to enforce the CAT and CED, in early 2017. The Bill is now under revision by the Ministry of Justice according to the NLA's comments.

### ***C. National Laws Threatening Human Rights***

In addition to regular laws passed by the legislative body, post 2014 Thailand is also ruled by a number of NCPO orders and announcements, many of which threaten or violate human rights. For example, to control dissident voices, the government uses both laws and NCPO orders to strengthen its hold on power.

<sup>9</sup> Thailand has a dualist legal system and often amends domestic laws to ensure compliance with international standards before ratifying international human rights laws.

### *Constitution 2017*

While the 2017 Constitution itself may not contain provisions seriously threatening human rights, it was designed to maintain the NCPO's influence in Thai politics after the formation of a civilian government. As such, Art 65 requires subsequent governments to follow the so-called 20-year National Strategic Plan drafted by the National Strategy Committee which was comprised of commanders of the security forces and NCPO-appointed politicians or officials. The National Strategic Plan Formulation Act 2017 also forces future government policies and national development plans, including national security plans, to be developed in accordance with the 20-year Strategic Plan (Art 5). Any failure to do so would be deemed illegal.

Moreover, Art 279 of the Constitution permits any NCPO announcement, order, or act, issued before or after the Constitution comes into effect, to remain intact and legitimate until the (new) government enacts legislation to revoke particular announcements/orders. Potentially, this could result in the continuing existence of human rights-violating orders (see below) before a strong enough political will is formulated to trigger the long legal process necessary to repeal them.

Particularly problematic is Art 265 upholding the NCPO's power and authority according to the 2014 Interim Constitution (drafted by the NCPO) until formation of a new cabinet. This power includes Art 44 which allows the Head of the NCPO to commit any act needed for reform, "national security," or national reconciliation.

### *Public Assembly Act (2015)*

A major tool to control freedom of expression and assembly is the Public Assembly Act. This requires organizers to seek prior notification and permission for any public assembly activities or demonstrations and prohibits public assembly in the vicinity of a number of government offices. The Act is regularly used in conjunction with Head of NCPO Order No 3/2558 (2015) which prohibits political assemblies of more than 5 people (see discussion on Order No 3/2558 below). Those who demonstrate or engage in other activities may be doubly charged by orders such as NCPO Order 3/2558 or may even be arbitrarily detained by the military.

### *Interim Constitution (2014), Art 44*

Despite promulgation of the 2017 Constitution, the NCPO still enjoys the power conferred on it by Art 44 of the 2014 Interim Constitution. Article 44 confers absolute power on the Head of the NCPO to act or prevent any act it deems necessary to proceed with the country's reform process, or to prevent and suppress any act that may undermine national security, the stability of the nation, the monarchy, or the national economy. Moreover, Art 44 also grants impunity to the NCPO, making it legally unaccountable for any actions and orders. Similarly, it has also been used to issue swift policies and implement a range of issues including the shuffling of government officials,

the recruitment of local administrative councils, provisions on human trafficking and deforestation, and to confiscate land for Special Economic Zones. Put simply, Art 44 allows the democratic process to be bypassed, effectively circumventing public participation in the policy-making process (see below for more details).

### *NCPO orders and announcements*

By December 2017, about three and a half years into power, the NCPO has already issued 208 announcements, 127 orders, and 179 Head of NCPO orders.<sup>10</sup> Many of these announcements/orders limit or violate civil and political rights. Examples include NCPO Announcement 7/2557 (2014) prohibiting political assembly, NCPO Announcement 49/2557 (2014) prohibiting support of political assemblies, Head of NCPO Order No 3/2558 (2015) on the maintenance of peace and national security, and NCPO Announcement 39-40/2557 (2014) prescribing criminal punishment for those breaking agreements not to involve themselves in political activities.<sup>11</sup> In particular, Head of NCPO Order No 3/2558 (2015) has often been used to silence opposition voices, resulting in the suppression of political rights and rights to a fair trial. As such, the order targets wrongdoings against the monarchy under *lèse-majesté*, wrongdoings against internal national security, armed crimes, and acts against the NCPO or any orders given by its Head. In addition, it prohibits political assemblies of more than 5 people (also criminalized by NCPO Announcement 7/2557 (2014))<sup>12</sup> and authorizes military officers to ban media and newspapers. Further, the order formalizes arbitrary detention in the name of “attitude adjustment training” for up to seven days as part of an alternative to legal charges if the accused voluntarily participates in the training. Violations are punished by prison terms of up to six months or a 10,000 baht (approximately US\$312) fine or both.

A number of NCPO Orders, many of which were issued under the auspices of Art 44 of the 2016 Interim Constitution, permit the NCPO to fast track development projects without public participation. For example, the NCPO exempts the demarcation of Special Economic Zones (SEZ)<sup>13</sup> and the construction of factories related to energy production and waste management from following existing city plans or relevant laws on building control.<sup>14</sup> As a result, such development projects may be constructed in otherwise protected areas. Under another order, the government may also reclaim public land and forests to be used as SEZ without allowing those living or using the

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<sup>10</sup> Compiled by iLaw (an NGO monitoring human rights violations in Thailand) in its campaign to revoke anti-human rights NCPO orders/announcements, available at <https://ilaw.or.th/sites/default/files/-คำสั่ง%20คสช..pdf> [in Thai].

<sup>11</sup> The NCPO summoned more than 1,000 people, many of whom had to sign an MOU promising not to get involved in political activities upon release.

<sup>12</sup> This announcement was issued on the day the NCPO staged the coup, in response to an on-going political demonstration at the time.

<sup>13</sup> Head of NCPO Order No 3/2559 (2016) on exempting city-planning laws and building control laws in special economic zones.

<sup>14</sup> Head of NCPO Order No 4/2559 (2016) on exempting city-planning laws for some businesses.

land or relevant government agencies owning the land to object.<sup>15</sup> Similarly, Head of NCPO Order No 9/2559 (2016) allows the state to search for investors in transportation, irrigation, prevention of public danger, hospital or residential projects deemed to be of “highest urgency” before study of the Environmental Impact Assessment (EIA) is complete. In other words, these NCPO orders and announcements violate the public’s right to participate in policy-making and may potentially impact the right to livelihood of affected communities.

#### ***D. Recent Court Cases Relating to Human Rights***

##### *Freedom of expression and lèse-majesté*

After more than 200 days in pre-trial detention, Jatupat Boonpattaraksa or Pai Dao Din, finally decided to plead guilty on the lèse-majesté charge of sharing King Rama X’s BBC News profile page on Facebook. He was sentenced to 5 years in prison which was reduced to 2 1/2 upon his confession.<sup>16</sup> Before the sentence, Pai’s family requested bail more than ten times to no avail. Moreover, the trial was conducted mostly behind closed doors in the Military Court. Likewise, in January 2018, another pro-democracy activist was notified by police summons that she had been charged with lèse-majesté, also for sharing the same BBC profile page despite the fact that almost 3,000 people had also shared the page. Fearing Pai’s fate, the activist has since decided to apply for asylum abroad.<sup>17</sup>

Pai’s case not only amply demonstrates how lèse-majesté is used to harass human rights defenders, but also exposes the violation of rights to a fair trial under military rule. Accordingly, Pai comprises just one of many lèse-majesté charges in recent years, and one of many incidences of judicial harassment concerning freedom of expression. In addition, Pai also faces a couple more charges for participating in campaign activities to demand democracy (see the next section for a further discussion on freedom of expression in general).

##### *State violence and impunity*

Two court rulings in 2017 significantly impact the state’s responsibility for violence and its impunity. In the first, pro-democracy students, who were arrested while organizing activities to commemorate the first anniversary of the coup in May 2015, filed a law suit against the police bureau, the army, and the Prime Minister’s Office for using force to disperse them. In October 2017, the Civil Court dismissed the case arguing the arrests and detentions had been legitimate because Art 44 of the then Interim Constitution and

<sup>15</sup> Head of NCPO Order No 17/2558 (2015) on reclaiming land to use in special economic zones.

<sup>16</sup> ‘Thai activist gets prison for sharing king’s profile on Facebook’ BBC News, 15 August 2017, available at <https://www.bbc.com/news/world-asia-40938914>, accessed on 9 August 2018.

<sup>17</sup> ‘Activist Chanoknan flees lese majeste summons’ Bangkok Post, 29 January 2018, available at <https://www.bangkokpost.com/news/politics/1403522/activist-chanoknan-flees-lese-majeste-summons>, accessed on 9 August 2018.



NCPO Order 3/2558 permitted certain limitations of the rights to assemble. As such, the court ruled that the damage caused had been as a result of the students' attempt to resist arrest and not due to any act of the authorities.

In another case, the Supreme Court dismissed murder charges against former Prime Minister Abhisit Vejjajiva (2008-2011) and Suthep Thaugsuban (the then head of the Centre for the Resolution of the Emergency Situation) for violently cracking down on the Red-Shirts protest in May 2010, killing several protesters, stating that Abhisit and Suthep had acted according to the Emergency Decree 2005 whilst holding political positions. Therefore, the acts were not of a criminal nature and the case should be decided by the Anti-Corruption Committee and the Supreme Court's Criminal Division for Political Office Holders. The Anti-Corruption Commission also dismissed the same charge against the two politicians in 2015 and has made no attempt to review its decision on the matter.<sup>18</sup> Both cases perpetuate the idea that basic rights to life may be violated during times of emergency. They also exempt the state from accountability, thereby encouraging a culture of impunity in Thailand.

Again, in early 2017, in two separate incidents, two ethnic minority youths were shot dead by soldiers at a checkpoint in northern Thailand. The case of Chaiyaphum Pasae, a stateless youth activist shot dead in May 2017, particularly gained notoriety. The soldiers claimed Chaiyaphum had been carrying drugs, that he resisted arrest, and was potentially armed. No progress has been made in investigating the extra-judicial killings despite the fact an inquest has already identified the perpetrators. On the contrary, witnesses in the Chaiyaphum case were harassed and threatened by authorities.

#### *Accountability over environmental rights*

Significantly, in September 2017, a court ruling affirmed the rights of local communities to the management of their natural resources. Accordingly, the Kanchanaburi Province High Court<sup>19</sup> forced a mining company to pay 36,050,000 baht (about US\$1.12 million) compensation to 150 Kality community members affected by lead-contamination of their water resources caused by the mining operation. The company was also required to rehabilitate the creek it had polluted.

The 19-year-long legal battle marks an unprecedented development in environmental rights lawsuits in Thailand. In its first environmental jurisdiction in 2013, the Supreme Administrative Court set the standard of government responsibility by ruling that the Department of Pollution Control was responsible for rehabilitating polluted creeks. By contrast, the decision in 2017 was remarkable for its recognition of the rights of

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<sup>18</sup> See, 'Murder charges against Abhisit and Suthep to be revived' Prachatai, 20 September 2017, available at <https://prachatai.com/english/node/7386>, accessed on 9 August 2018.

<sup>19</sup> Kanchanaburi is a province in western Thailand.

the “traditional local community” in natural resources management (Arts 66-67 of the 2007 Constitution) and their rights to remedy.

## Part 2: Outstanding Human Rights Issues

Existing under military dictatorship for more than three years, civil and political rights in general, and rights to free speech and assembly in particular, remain the key outstanding human rights issues in Thailand. Whilst charges against those involved in political activities or democracy movements in 2017 have declined since the years immediately following the coup, the downward trend remains clear with severe violation of civil and political rights becoming the norm and prospects for democracy still weak.<sup>20</sup> In addition, the public’s right to participate in policy-making has been reduced, leaving the people with little say in their own future. The following section will review Thailand’s political rights by first highlighting the issues of freedom of expression, judicial harassment, and the militarization of public policy, then analysing how they reflect the country’s democratic prospects.

### *A. Freedom of Expression and the Right to Assembly*

The military maintains tight control over public perception of its government by tightly controlling those voices monitoring or criticizing the NCPO and the government. To achieve this, the NCPO has used legal controls, judicial processes, outright intimidation, and harassment to create an atmosphere of fear amongst the public. As a result, demonstrations against the government or state public policy are rare as such actions would attract harsh retaliation from the state.

In addition, the NCPO also utilises the laws and orders discussed in the previous section and extra-legal measures to threaten and intimidate its perceived enemies. Thus, military intervention in public activities, including public seminars, academic conferences, and art exhibitions, are common. At least 1,319 people were reportedly summoned or paid a visit by soldiers, both formally and informally, and at least 152 public activities were interfered with or forced to cancel (as of 30 June 2017).<sup>21</sup> Similarly, the military refers to Head of NCPO Order No 13/2559 (2016) which aims to control “the person who commits certain criminal acts harmful to peace and order or undermine national, social, and economic systems,” to threaten and silence civil society groups (especially those working in the area of natural resources) by summoning vocal leaders of those movements to report to the military.<sup>22</sup> As of August 2017, at least 66

<sup>20</sup> See more details at ‘Charges against individuals after 2014 coup’ Ilaw, 22 July 2018, available at <https://freedom.ilaw.or.th/en/content/charges-against-individuals-after-2014-coup>, accessed on 9 August 2018.

<sup>21</sup> Ilaw, ‘Latest statistic [sic]’ Ilaw, 22 May 2018, available at <https://freedom.ilaw.or.th/en/content/latest-statistic>, accessed on 15 June 2018.

<sup>22</sup> ‘Verdicts on three computer crime cases – section 44 to control influential people, but summoning community members instead’ [in Thai], Ilaw, 2016, available at <https://freedom.ilaw.or.th/report/มีนาคม-2559-พิพากษาคดีพบบคอมพิวเตอร์ฯ-ใช้ม44-คุมผู้มีอิทธิพลแต่เริ่มเรียกชาวบ้านรายงานตัว>, accessed on 1 June 2018.

people have been accused of sedition (under s.116 of the Penal Code) with the majority prosecuted for criticizing the coup or the NCPO.<sup>23</sup>

Even movements opting to use non-confrontational activities may face harassment. For example, peaceful protesters against the coal fire power plant in Krabi and Songkhla province have been arrested, charged, and detained many times throughout the year. In November, when the protesters marched to submit a petition to a mobile cabinet meeting, the state used force to disperse the demonstration. Sixteen activists were arrested, charged, and later released on bail.<sup>24</sup> Likewise, local communities affected by a gold mine in Phichit province in northern Thailand were charged for coercion (Art 309 of the Penal Code) and violations against the Public Assembly Act when they tried to stop the transportation of gold ore in their community. In September 2017, the court found members of the community guilty but suspended their sentences for one year.

Even minor criticism of the government may encounter a harsh response as exemplified by the so-called “academic conference is not a military barrack” case. In July 2017, during the 13th International Conference on Thai Studies held in Chiang Mai province, uniformed soldiers attended the conference without registering to monitor sessions discussing politics or democracy-related issues. A group of academics protested the interference by holding up placards reading, “Academic Conference is Not a Military Barrack” at the conference site and posted the photos online. The northern section of the army then pressed charges against the group for violating NCPO Order 3/2558 (2015) which prohibits any political assembly of more than five people. The case is still on-going.

Freedom of expression via online media has further been curbed through the Computer Crimes Act (entering into force in May 2017) and the closure of websites. The Act empowers the Ministry of Digital Economy and Society to demand internet service providers and social media administrators remove information without a court order. In the same month the law entered into force, the Ministry admitted it had closed down more than 6,300 website URLs. It also targeted 600 other URLs using overseas servers and which therefore could not be closed down from within Thailand. As reported by the Ministry, most of the affected URLs concerned national security while the rest were gambling and pornography websites.<sup>25</sup>

<sup>23</sup> ‘Section 116: When ‘sedition’ is used as the obstruction of freedom of expression’ Ilaw, 2017, available at <https://freedom.ilaw.or.th/en/blog/section-116-when-%E2%80%98sedition%E2%80%99-used-obstruction-freedom-expression>, accessed on 2 June 2018.

<sup>24</sup> ‘More power plant project protesters face arrests’ ThaiPBS, 28 November 2017, available at <http://englishnews.thaipbs.or.th/power-plant-project-protesters-face-arrests/>, accessed on 9 August 2018.

<sup>25</sup> ‘Closed 6 thousands inappropriate websites’ [in Thai], Thansettakij, 4 May 2017, available at <http://www.thansettakij.com/content/146263>, accessed on 9 August 2018.

The Computer Crimes Act and the defamation law continue to be used by the state and business sectors in what could be called Strategic Litigation against Public Participation (SLAPP). Legal charges under those laws were brought against critics, human rights defenders, and civil society actors to silence opposition voices and prevent reports of human rights violations. One notorious case concerned defamation and computer crime charges brought by the Internal Security Operations Command (ISOC), the military's key internal security organization, against three human rights activists for alleging that the military had tortured people in southern Thailand.<sup>26</sup> Following negotiations, the military dropped the charges in March 2017 on condition that any report on human rights violations in Thailand's deep south must first be approved by a Fact Checking Committee which would be set up with representatives from the ISOC and civil society before going public. In October, the public prosecutor dismissed the case.

While the decision to drop the charges against the human rights defenders is commendable, the fact human rights reports must now acquire state approval is worrisome. Furthermore, the military continues to use judicial harassment to silence information on cases of alleged torture. In early 2018, the army also filed a defamation case against an alleged torture victim for discussing his experiences in a television program despite the fact that in 2016 the Supreme Administrative Court had already ordered the army to pay him compensation.<sup>27</sup>

SLAPP is also used by companies against human rights defenders (usually without government interference) to ensure business rights are protected. Among some well-known cases are the defamation charges brought by a gold mining company against local community members and media for exposing the impact of gold mining in Loei province. A second concerns another gold mining company's charges against an academic working on the impact of a mine in Pichit province (as discussed earlier), whilst a third regards a chicken farm's charges against Burmese migrant workers who reported labour rights violations to the National Human Rights Commission of Thailand.

Up to May 2018, at least 421 individuals have been charged under NCPO Order No 3/2558 or NCPO Announcement No 7/2557.<sup>28</sup> Among these were more than 20 individuals charged for participating in campaign activities to raise awareness about rights to natural resources and healthcare. In other words, the NCPO is continuing to suppress not only those involved in democracy/political movements but also any

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<sup>26</sup> 'Thai activists charged over 'military torture' report' BBC News, 26 July 2016, available at <https://www.bbc.com/news/world-asia-36894212>, accessed on 2 June 2018.

<sup>27</sup> 'Army sues deep south human rights defender for exposing torture on TV' Prachatai, 2018, available at <https://prachatai.com/english/node/7626>, accessed on 14 June 2018.

<sup>28</sup> See, 'Charges against individuals after 2014 coup' Ilaw, available at <https://freedom.ilaw.or.th/en/content/charges-against-individuals-after-2014-coup>, accessed on 9 August 2018.

voices attempting to participate in policy-making. In cases where no formal charge is brought against civil society actors, authorities regularly refer to such laws/orders to threaten and prevent political assemblies or public activities that may criticize the government. For example, in 2015 alone, it was reported that the authorities and the NCPO threatened to use public assembly-related legal measures against at least nine groups working to protect natural resources or labour rights.<sup>29</sup>

### ***B. Political Rights and the Right to Participate in Decision-Making***

Not only does the NCPO control the law and policy-making institutions to prevent access to formal channels and mechanisms to participate in public and political affairs, it has also expanded the role of the military in civilian affairs. Head of NCPO Order No 4/2558 (2015) authorizes law enforcement authorities to “ask for help” from the military to enforce any law seen as “protecting public interest and the common people,” including forest protection and the use of public roads. This overly broad definition leaves room for authorities to request military intervention in almost any affair.

In addition to a number of NCPO orders discussed throughout this chapter, the government’s forest protection policy best illustrates its militarization of public affairs. Although forest protection has been included in the military’s national security scheme for the past few decades, its role in prosecuting forest-related crimes was never formalized until the NCPO came to power. Head of NCPO Order No 64/2557 (2014) authorizes security forces, including the police and army, to participate in the suppression of deforestation. Under the NCPO’s so-called “Reclaiming the Forest” policy, many local communities living in the forest before the demarcation of protected areas in the process of negotiating forest use with local authorities, are now facing threats of eviction. Reports from local activists and NGOs claim the number of arrests of local community members is higher than it has ever been.<sup>30</sup>

The military’s involvement has serious consequences on the right to self-determination as it strengthens its control over the design and implementation of policies without public participation. This is of particular concern in cases where such policies may impact livelihoods because limited space for public comment on policies or complaints can only adversely affect such rights.

The future is even more bleak when considering the prospect of a return to civilian rule. In November 2017, the government stated it would hold an election in 2018 but followed it with another announcement that the election would only occur after the King’s coronation. At the time of writing in August 2018, the date of the ceremony has

<sup>29</sup> ‘Using Public Assembly Act to threaten people. No demonstrations of any kind’ [in Thai], Ilaw, 2018, available at <https://ilaw.or.th/node/3991>, accessed on 15 June 2018. If political activity cases are included, the number is higher.

<sup>30</sup> See, e.g. Nanchanok Wongsamuth, ‘Forest clampdown hurts poor’ Bangkok Post, 11 September 2016, available at <https://www.bangkokpost.com/news/special-reports/1083356/forest-clampdown-hurts-poor>, accessed on 13 June 2018.

yet to be announced. In the meantime, the NCPO has gradually allowed the formation of political parties which may organize some activities. However, parties may not arrange meetings and may only organize general assemblies with NCPO approval.<sup>31</sup> In this environment of restricted freedom of expression and violations of civil and political rights, undoubtedly election campaigns will also be tightly controlled by the NCPO.

### **Part 3: Conclusion**

While many human rights cases and issues have not been discussed here, this chapter points to the state of civil and political rights as a basic requirement for the enjoyment of other rights. Thus, without an open democratic space, the exercise and protection of other rights will remain limited in Thailand.

Of hopeful significance was the NCPO's November 2017 announcement that human rights are now part of the National Agenda<sup>32</sup> although what this means in practice remains a mystery. However, despite this, the military junta's human rights practices and policies seem relatively unchanged leaving the future of human rights and democracy in Thailand on virtual life support. Without enabling an environment that encourages free and fair elections and open political discussion, it is unlikely the coming election will herald genuine democratic change. Combined with the new government's obligation to follow the NCPO-drafted National Strategic Plan for the next 20 years, Thailand's political future remains in jeopardy.

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<sup>31</sup> Head of NCPO Order No 53/2560 (2017) on operations according to the Political Party Organic Act.

<sup>32</sup> 'Cabinet raises profile of human rights with two-year national agenda plan' The Nation, 22 November 2017, available at <http://www.nationmultimedia.com/detail/politics/30332236>, accessed on 18 January 2018.