



Human Rights Now

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June 30, 2015

Statement: Over one year has passed since the coup d'état~ human rights situation in Thailand ~

The interim constitutional provision provides the junta with unaccountable powers

1. Over one year has passed since the coup d'état in Thailand.

Human Rights Now (HRN), a Tokyo-based international human rights NGO, is highly concerned about the human rights situation in Thailand following the replacement of the nationally imposed martial law with orders issued under Section 44 of the interim constitution, which tightens the junta's grip on power and grants them even more draconian powers.

The current prime minister of Thailand and leader of the ruling junta, National Council for Peace and Order (NCPO), General Prayuth Chan-ocha, announced on March 31, 2015 that he had requested King Bhumibol Adulyadej's permission to lift the nationwide imposition of martial law and replace it with orders issued under Section 44 of the interim constitution. On April 1 he was granted permission.¹

Since the nationwide imposition of martial law and the subsequent coup d'état, the NCPO has engaged in censorship, banned public gatherings and ordered oppressive targeting of activists, politicians, journalists and civil society groups. More than 1,000 people have been detained without charge,² and hundreds of people have been sent to military courts which fail to comply with international fair trial standards.³

¹ <http://www.un.org/apps/news/story.asp?NewsID=50495#.VYI3hfntmkp>

² http://www.nytimes.com/2015/04/11/opinion/trickery-and-false-promises-in-thailand.html?ref=topics&_r=0

³ <http://www.hrw.org/news/2015/05/22/thailand-deepening-repression-one-year-after-coup>

Instead of moving towards democratic civilian rule following the lifting of martial law, the invocation of Section 44 further tightens the military's grip on power. This allows them to continue violating fundamental human rights, such as those to freedom of association, freedom of expression, and the liberty and security of person.

2. Section 44 bestows the head of the NCPO with the power to issue any legislative, executive or judicial order and take any action deemed necessary for the benefit of strengthening public unity and harmony, or for the prevention, disruption or suppression of any act that undermines the monarchy, public peace, national security and administration of state affairs.⁴ Furthermore, it is stated that such actions are completely legal and constitutional. Even actions that violate human rights under international and national law would be deemed legal.⁵ The section requires the NCPO chief to report such an order or action immediately to the National Legislative Assembly and the Prime Minister. However, the fact that the NCPO chief is currently the Prime Minister renders this restraint meaningless. Consequently, Section 44 grants unlimited power to one single person, without liability and without any oversight. The provision undermines the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a party.

Under NCPO order no. 3/2015, which was issued under Section 44, military personnel can be appointed as peace and order maintenance officers with sweeping law enforcement powers. They can search, arrest, and detain without judicial oversight, and enforce anything ordered by the NCPO.⁶ These officers have an even wider scope of power than those under martial law had.⁷

3. Section 44 and Order no. 3/2015 are being used to continue measures that had been adopted under martial law to silence those in opposition to the junta's rule. Order no. 3/2015 explicitly gives the peace and order maintenance officers the authority to prohibit the reporting of news, and sales of books and publications that could create misunderstanding affecting national

⁴ Ibid

⁵ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15793&LangID=E>

⁶ Ibid

⁷ Thai Lawyers for Human Rights, *Public Statement by the Thai Lawyers for Human Rights (TLHR): On the first anniversary of the coup in Thailand*, Bangkok, 22 May, 2015
<https://tlhr2014.wordpress.com/>

security and public order.⁸ For example, on June 4, 2015, police asked the Foreign Correspondent Club of Thailand (FCCT) to refrain from hosting an event where Thai Lawyers for Human Rights (TLHR) was supposed to launch a report on the human rights situation in Thailand. The authorities have intervened in at least 71 other public events since the coup.⁹ Such interventions and censorship are clear violations of the freedom of expression. Freedom of peaceful assembly similarly has been very limited due to the criminalization of any political gathering of more than five people.¹⁰ On the first anniversary of the coup, May 22, 2015, a large number of students and activists carrying out peaceful demonstrations were arrested in Bangkok and in Khon Kaen province. The police denied 20 detained demonstrators in Bangkok access to lawyers. Two of the demonstrators suffered injuries that required medical care, due to the military and police's harsh treatment at the time of the arrest.¹¹

4. Secret detentions and unfair military courts are still being widely used in Thailand. Formerly under martial law, and now under Order No. 3/2015, the military is allowed to secretly detain people without charges or judicial review for seven days.¹² This situation increases the risk of torture and ill-treatment for the detainees. Since May 2015, military courts have replaced civilian courts for offenses such as insults against the monarchy and violations of the NCPO's orders.¹³ So far hundreds of people have been tried by military courts.¹⁴ A major issue with the use of military courts is their lack of impartiality and independence. Order no. 3/2015 permits peace and order maintenance officers to act as inquiry officials along with the police. The result is a lack of impartiality and a violation of

⁸ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15793&LangID=E>

⁹ Thai Lawyers for Human Rights, *Press release: Suppression of public launch of the report on situation of human rights one year after the coup in Thailand*, Bangkok, June 4, 2015
<https://tlhr2014.wordpress.com/>

¹⁰ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15793&LangID=E>

¹¹ <https://www.amnesty.org/en/articles/news/2015/05/thailand-arrests-on-coup-anniversary-stark-reminder-of-repression/>

¹² <http://www.hrw.org/news/2015/05/22/thailand-deepening-repression-one-year-after-coup>

¹³ Ibid

NCPO Order 37 and 38/2014 issued on 25 May 2015 established the jurisdiction of military courts to try civilians for four specific crimes (1) lese majeste, (2) weapon offences, (3) offences related to national security and (4) violations of NCPO orders.

¹⁴ Thai Lawyers for Human Rights, *TLHR launches report on first anniversary of coup: All major civil rights found to have been grossly violated*, Bangkok, June 4, 2015
<https://tlhr2014.wordpress.com/>

the right to a fair trial, as it allows the officers to be involved from the time of arrest and throughout the whole legal process.¹⁵

5. UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein has expressed alarm over the wide range of human rights violations that can be permitted under section 44 of the interim constitution.¹⁶ In a news release on April 2, 2015, he said, “I am alarmed at the decision to replace martial law with something even more draconian, which bestows unlimited powers on the current Prime Minister without any judicial oversight at all.”¹⁷ The government of Thailand is a signatory to the ICCPR and has a legal obligation to respect and protect the rights it guarantees. Section 44 of the interim constitution, and actions committed in conjunction with it, clearly violate freedom of expression, freedom of peaceful assembly, freedom of association, and the right to liberty and security of person, which are guaranteed under Articles 19, 21, 22 and 9 of the ICCPR, respectively.

6. Recommendations

HRN urges the government of Thailand to:

- Stop exercising Section 44 of the Interim Constitution
- Immediately stop crackdowns on dissidents who merely exercise their rights and freedoms
- Stop trying civilians in military courts
- Cease the use of detention without judicial review
- Promptly restore rule of law and human rights in accordance with Thailand’s obligations under domestic and international human rights law

¹⁵ Thai Lawyers for Human Rights, *Public Statement by the Thai Lawyers for Human Rights (TLHR): On the first anniversary of the coup in Thailand*, Bangkok, May 22, 2015
<https://tlhr2014.wordpress.com/>

¹⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15793&LangID=E>

¹⁷ Ibid