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# Human rights violation and (non)prospect for democracy in Thailand



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## EXECUTIVE SUMMARY

The international community (in particular, the European Union and the United States) suspended political relations with Thailand after the military coup in 2014. This relationship has been gradually normalized since the December 2017 announcement, in response to the Thai Military Government's proposal for an election to be held in the end of 2018, that the EU would "pursue gradual political re-engagement" including political contacts at all levels and resume talks on a free trade agreement. This policy brief, however, suggests that the Thai government's claim to hold an election is neither a promise of return to genuine democracy, nor does it ensure respect of rights and liberties; rather, this policy brief recommends the international community to continue monitoring and pressuring the Thai military junta to respect human rights, freedom of expression and public participation. It is also recommended that any future talks between the EU and Thailand include the issue of human rights defenders and civil society. Political and trade relationships cannot exist in an environment where HRDs and civil society are unable to participate in the discussion, especially if they are not able to make either their own communities or EU governments aware of potential impacts of these relationships.

## INTRODUCTION

Thailand has been under military dictatorship led by the National Council for Peace and Order (NCPO) since a coup d'état in May 2014. The junta has formed a government known for severe restriction of rights and freedoms. For more than four years, human rights, freedom of expression and political rights in particular, have been severely violated through NCPO-issued legal provisions, the use of legal prosecution, harassment and arbitrary exercising of power. About six hundred people have been arrested and more than five hundred people have been charged<sup>2</sup> for demanding democracy or expressing critiques of the military government<sup>3</sup>. The civil society's space to participate in public policy-making and in monitoring the state's policy and implementation is further limited by the junta's ranges of orders and policies that cut off people's participation. The NCPO has bypassed a number of public participation processes to accelerate its development projects and allows military officers to play a larger role in public affairs.

Despite a prospect to hold an election in early 2019, the potential of a full democracy and respect for human rights in Thailand is still small. The 2017 Constitution that was drafted under close watch of the junta and without genuine public participation<sup>4</sup> has paved the way for the military to remain influential in Thai politics for years to come. It also allows the NCPO's

rights-violating orders to remain legitimate until further repealed.

While the NCPO has gradually taken a step back on some of its control and violation, for example by ceasing to use Martial Law in April 2015<sup>5</sup>, revoking the use of Military Court to try civilians in September 2016<sup>6</sup>, allowing political parties to operate in March 2018 and to recruit new members in April 2018<sup>7</sup>, and promising an election in November 2018<sup>8</sup> (which was later postponed to an unknown date)<sup>9</sup>, it still suppresses freedom of expression and restricts political activities to a large extent. More importantly, the election date has still not been confirmed and has been constantly postponed. Even if an election was to be held, its legitimacy would be questioned because of the many legal provisions and policies that limit and violate civil and political rights before the election.

While the violations against political activists and democracy movements are severe and widespread, this policy briefly focuses instead on the junta's impacts on civil society space in general. It discusses the less documented policies and implementations that restrict the rights of the people to participate in public affairs which may have prolonged impacts on the Thai political landscape. In particular, the policy briefs analyses the military's attempts to maintain its influence even after the change of government following a promised election. By pointing to these attempts to curb civil society and freedom

2 One person maybe facing more than one legal charges.

3 See update information from iLaw, an NGO monitoring freedom of expression in Thailand, at iLaw, Latest Statistics [website], 2017, <https://freedom.ilaw.or.th/en/content/latest-statistic> (accessed 15 June 2018) and iLaw, Charges against Individuals after 2014 Coup [website], 2018, <https://freedom.ilaw.or.th/en/content/charges-against-individuals-after-2014-coup> (accessed 15 June 2018).

4 At least 143 persons are prosecuted for carrying out activities related to the draft Constitution or the referendum, including disseminating information about the content of the Constitution. See details on restrictive laws and related cases in TLHR, TLHR's Legal Opinion on Prosecutions of "Referendum Suspects" [website], 2016, <http://www.tlhr2014.com/th/?p=3095> (accessed 22 February 2017).

5 Announcement to Cease Using the Martial Law, dated 1 April 2015.

6 Head of NCPO's Order 55/2559 (2016) on Actions on Some Cases under the Jurisdiction of the Military Court.

7 Head of NCPO's Order 53/2560(2017) on Operations According to the Political Party Organic Act.

8 Bangkok Post, 10 October 2017, Prayut: General Election in 13 Months, <https://www.bangkokpost.com/news/politics/1340072/> (accessed 2 June 2018).

9 The NCPO later announced postponement of the promised election. At the time of writing this policy brief in June 2018, an election is promised about the coronation ceremony of King Rama X. No definite date is given. See Washington Post, 19 June 2018, Coronation Plans Threaten Thai Election Schedule, [https://www.washingtonpost.com/world/asia\\_pacific/coronation-plans-threaten-thai-election-schedule/2018/06/19/1e29fc6a-73c1-11e8-bda1-18e53a448a14\\_story.html?utm\\_term=.1205fe160311](https://www.washingtonpost.com/world/asia_pacific/coronation-plans-threaten-thai-election-schedule/2018/06/19/1e29fc6a-73c1-11e8-bda1-18e53a448a14_story.html?utm_term=.1205fe160311), (accessed 30 June 2018).

of expression in the long run, the policy brief argues that the opening of political dialogue with the EU must always consider these limitations, for any future agreement with the EU will occur without the transparency and legitimacy of civil society participation.

## PROBLEM DESCRIPTION

Since coming to power, the NCPO has been trying to maintain political stability through the use of suppressive laws and orders against opposition voices. This extends not only to the political opposition or democracy movements but also to civil society actors who seek public participation in policy-making or in policy monitoring in general. The NCPO also exercises control over development policies, other public affairs, and related laws with less opportunity for the participation of the public. The space of the civil society is thus restricted, both in term of formal channels of people's participation and in term of space outside formal politics to collectively voice people's concern.

### 2.1. Judicial harassment as a means to restrict freedom of expression and rights to political association and assembly

The NCPO has been using existing and new laws and its own orders to criminalize or limit freedom of expression and political association/assembly. Since it came to power, political gathering has been criminalized through a series of laws and orders, in particular the Martial Law (in effect until April 2015), the Head of NCPO's Order 3/2558(2015), the Public Assembly Act 2015 and the sedition act (Article 116 of the Criminal Code). Similarly, freedom of expression is controlled by the legal provisions such as the Computer Crime Act 2017, the *lese majeste* law (Article 112 of the Criminal Code), and also by other forms of threats and harassments by the authorities.

### *Prohibition of political and public gathering*

After it lifted Martial Law in April 2015, the NCPO rested its power on the Head of NCPO's Order 3/2558(2015) under Section 44 of the then interim Constitution which gives absolute power to the Head of the NCPO, with impunity. The Head of NCPO's Order 3/2558 authorizes military officers to be in sweeping control over wrongdoings against the monarchy according to the *lèse-majesté* law, wrongdoings against internal national security, armed-related crimes, and any act against the NCPO's and the Head of NCPO's orders. It authorizes military officers to arbitrarily detain individuals up to 7 days and to censor a variety of media. It criminalizes public political meetings of more than five people (also criminalized by the NCPO's Announcement 7/2557(2014)<sup>10</sup>) and unapproved peaceful assembly. The Order prescribes prison terms of up to six months or a 10,000 baht (approximately 312 USD) fine or both for any violation. The Order also formalizes "attitude adjustment training" for up to seven days as part of the alternatives to legal charge if the accused voluntarily join the training.

In practice, the Head of NCPO's Order 3/2558 (hereafter NCPO Order 3/2558) is often used in combination with the Public Assembly Act which was passed by the NCPO-appointed National Legislative Assembly in 2015. The Act requires, for the first time, prior notification and permission when someone wishes to organize public assembly activities or demonstrations. Some areas including a number of government offices are barred from being used to organize demonstrations. While the Public Assembly Act guarantees rights in criminal procedures, those who engage in demonstrations or other activities may be doubly charged or threatened to be charged by the NCPO Order 3/2558 and arbitrarily detained by the military.

Up until May 2018, at least 421 individuals had been charged by the NCPO Order 3/2558

<sup>10</sup> This announcement was issued the day the NCPO staged the coup, in response to the on-going political demonstration at that time.

or the NCPO Announcement 7/2557<sup>11</sup>. Among these were more than 20 people who were charged because they participated in campaign activities to raise awareness about the rights to natural resources and healthcare. In other words, the NCPO Order 3/2558 has been used to suppress not only those involved in democracy/political movements but also groups mobilizing to protest development projects or to advocate changes in public policies. In the cases where no formal charge are brought against the civil society actors, the authorities regularly refer to these laws/orders to threaten and prevent political assembly or public activities that may criticize the government. In 2015 alone, for example, it is reported that the authorities and the NCPO had threatened to use the public assembly-related legal measures against at least nine groups working to protect natural resources or labor rights<sup>12</sup>.

### **2.1.1. Restriction of Freedom of Expression**

Not only is public assembly restricted, expression of opinions on democracy or the performance of the NCPO is also strictly controlled. As reported in August 2017, or about 39 months after the coup, at least 66 person have been accused by the sedition act. The majority of them were prosecuted for criticizing the coup or the NCPO<sup>13</sup>. Another legal measure often used to limit freedom of expression is the amended Computer Crimes Act passed by the NLA in December (entered into force in May 2017). The Act further expands state power to control online content and to request internet service providers and social media administrators to take off information. It also set up a Computerized

Information Scrutiny Committee to monitor online information and to decide if any information is against public order and morals (Article 20). The Committee can request a court order to erase the given information.

The Computer Crimes Act and defamation law have often been used together to suppress critical voices of human rights defenders and civil society actors. In addition to the charges raised by the companies criticized by the human rights defenders (for example, by a gold mine company against the affected local community members who protest against the mine in Loei province, by a food processing company against a researcher who exposes the violation of migrant workers)<sup>14</sup>, the military also uses the Computer Crime Act against those who criticize its abuse of power. One of the most notorious cases is the defamation and computer crime charges brought by the Internal Security Operations Command, the key internal security organization led by the military, against three human rights activists for alleging that the military tortured people in southern Thailand<sup>15</sup>. Recently, the army also filed defamation case against an alleged torture victim for discussing his torture experience in a television program<sup>16</sup>.

### **2.1.2. Threats and Harassment of Civil Society Actors**

The NCPO mainly used the above-mentioned laws and orders to punish people and create an atmosphere of fear. On top of that, extralegal measures are being used to threaten and intimidate those who are active in campaigning against government policies. As reported by iLaw, an NGO monitoring political rights after the coup, altogether at least 1,319 people were

11 See <https://freedom.ilaw.or.th/en/content/charges-against-individuals-after-2014-coup>.

12 iLaw, Using Public Assembly Act to Threat People. No Demonstration of All Kinds [website], 2018, <https://ilaw.or.th/node/3991> [in Thai] (accessed 15 June 2018). The number is higher if includes the cases of political activities.

13 iLaw, Section 116: When 'Sedition' is used as the obstruction of freedom of expression [website], 2017, <https://freedom.ilaw.or.th/en/blog/section-116-when-%E2%80%98sedition%E2%80%99-used-obstruction-freedom-expression> (accessed 2 June 2018).

14 OHCHR, Thailand: UN experts condemn use of defamation laws to silence human rights defender Andy Hall [website], <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23095&LangID=E> (accessed 1 June 2018).

15 BCC News, Thai Activists Charged Over 'Military Torture' Report [website], 26 July 2016, <https://www.bbc.com/news/world-asia-36894212> (accessed 2 June 2018).

16 Prachatai, Army sues Deep South human rights defender for exposing torture on TV [website], 2018, <https://prachatai.com/english/node/7626> (accessed 14 June 2018).

summoned or paid visits by soldiers both formally and informally, and at least 152 public activities were intervened in or forced to cancel (as of 30 June 2017).<sup>17</sup> The military also refers to the Head of NCPO's Order 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". While claiming to target the mafia and criminals, the Order 13/2559 has been used to threaten and silence civil society groups, including, among others, the community affected by oil spilling, the community protesting against a waste-fueled power plant, the community in land conflict with the state agencies, the anti-gold mining movement, by summoning the vocal leaders of those movements to report to the military<sup>18</sup>.

All these judicial harassments limit the opportunities and channels the civil society could use to question or monitor development projects or public policies. These concerns are also critical in future international trade and political agreements. The EU cannot normalize relations with Thailand and create trade and political agreements if they do not include the free participation of Thai civil society.

## 2.2. Limited space for public participation in policy making and in monitoring of government

Besides the restriction on civil and political rights discussed above, the NCPO has also ripped apart the existing mechanisms that enable public participation in policy-making processes. The NCPO has exploited its power to fast track development projects without public participation. When combined with the restriction

of freedom of expression and political assembly, NCPO development policies potentially cause severe impacts on the livelihoods of the people.

### 2.2.1. Absolute Power under Section 44 and Development Projects

Since the NCPO lifted Martial Law in April 2015, it has been exercising absolute power through the Section 44 of the 2014 Interim Constitution, which gives the Head of the NCPO absolute power to act or stop any act as the NCPO deems necessary to proceed with the country's reform process or to prevent and suppress any act that may undermine national security or the stability of the nation, the monarchy and the national economy. Section 44 also grants impunity to the NCPO by preventing any legal accountability of actions and orders delivered under its auspice. Although the 2017 Constitution has been promulgated, Section 44 of the 2014 Interim Constitution is still widely used by the NCPO to bypass any legal and democratic process. It has been used to exercise the NCPO's power in ranges of issues, including among others, shuffling of government officials, recruitment of local administrative councils, fishing, prevention of deforestation, human trafficking, land confiscation to be used for Special Economic Zones (SEZ)<sup>19</sup>. In effect, any opportunity of participation the people may have in policy making on those issues is taken away.

In implementation of development-related projects, Thailand has in the past created substantive measures to ensure public participation and livelihoods and environmental protection. These protective measures, however, are now being bypassed by the NCPO. By exercising power under Section 44, the NCPO gives exemption to the demarcation of the Special Economic

17 iLaw, Latest Statistics [website], 2017, <https://freedom.ilaw.or.th/en/content/latest-statistic> (accessed 15 June 2018).

18 iLaw, Verdicts on Three Computer Crime Cases-Section 44 to Control Influential People, but Summoning Community Members Instead [website, in Thai], 2016, <https://freedom.ilaw.or.th/report/มีนาคม-2559-พิพากษาสามคดีพบบคอมพิวเตอร์ฯ-ใช้ม44-คุมผู้มีอิทธิพลแต่เริ่มเรียกชาวบ้านรายงานตัว>, (accessed 1 June 2018).

19 See the compilation of the exercising of power under Section 44 in 2014-2016 at iLaw, Report on the Exercising of Power under Section 44 of the Interim Constitution of Thailand [website], 2018, <https://ilaw.or.th/node/3938>, accessed 2 January 2018; and in 2017-2018 at iLaw, Report on the Exercising of Power under Section 44 of the Interim Constitution of Thailand 2017 [website], 2017, <https://ilaw.or.th/node/4827> (accessed 15 June 2018) and iLaw, Report on the Exercising of Power under Section 44 of the Interim Constitution of Thailand 2018 [website], 2018, <https://ilaw.or.th/node/4828> (accessed 15 June 2018).

Zone from following existing city plans or relevant laws on building control<sup>20</sup>. As a result, a SEZ could be demarcated in the area otherwise barred from constructing industrial factories. The NCPO also exercises Section 44 power to reclaim public land and forests to be used as SEZ without any procedure to allow the people who have been living or using that land or even relevant government agencies to have a say<sup>21</sup>.

Similarly, the Head of NCPO's Order 4/2559 (2016) exempts the use of city planning laws for the construction of factories related to energy production and waste management. This means that agricultural areas and some natural reserved areas can now be used to build powerplants. Another Head of NCPO's Order, no. 9/2559 (2016), allows the state to proceed with the search for investors of transportation, irrigation, prevention of public danger, hospital or residential projects that are deemed "highest urgency" without waiting for the consideration of the Environmental Impact Assessment (EIA) result. The only safeguard available, in this case, is that the government cannot sign the contract before the EIA is approved.

### 2.2.2. Militarization of Public Policy

By exercising absolute power under Section 44, the NCPO has authorized security officers (the army) to have power or a role in public civilian affairs. This is relevant to forest protection in particular. Although forest protection has been included in the military's national security scheme for the past few decades, the role of the military in prosecuting forest-related crimes was never formalized until the NCPO came to power. The Head of NCPO's Order 64/2557 (2014) authorizes security forces, including the police and army, to participate in suppression of deforestation. With this so-called "Reclaiming the Forest" policy of the NCPO, many local commu-

nities that have been living in the forest before demarcation of protected area and have been negotiating their forest use with local forest authorities are facing threats of eviction. Reports from local activists and NGOs claim the number of arrest of local communities during the NCPO rule is higher than during other regimes<sup>22</sup>.

The NCPO also increases the role of the military in other public affairs. In the Head of the NCPO's Order 4/2558 (2015), the NCPO authorizes law enforcement authorities to "ask for help" from the military in enforcing any law that is seen as "protecting public interest and the common people", including forest protection and the use of public roads. This is overly broad and leaves room for the authorities to have the military intervene in any affair.

With less formal channels, the civil society could have minimal marginally participation in policy making and in monitoring the government. Not only is the protection of civil and political rights at its lowest, but also the economic and social rights are at high risk. Although with some prospect for democracy after the election, the space of civil society is not guaranteed and needs to be closely monitored.

### 2.3. Prospects for Democracy after the Promised Election

Recently, the NCPO has been alleviating some of its control. Nevertheless, freedom of expression and rights to association and assembly are still being violated and space of civil society remains limited. Some of the positive signs include the cancelation of the use of Martial Law in April 2015 (but limits civil and political rights under Order 3/2558 instead), the withdrawal of the use of Military Court to try civilians in September 2016 (but still keep the pending cases in the Military Court),<sup>23</sup> permission to form politi-

20 The Head of NCPO's Order 3/2559 (2016) on exemption of city planning laws and building control laws in special economic zones.

21 The Head of NCPO's Order 17/2558 (2015) on reclaiming the land to use in the special-economic zones.

22 See, for example, Nanchanok Wongsamuth, Forest Clamp Down Hurts Poor, Bangkok Post, 11 September 2016, <https://www.bangkokpost.com/news/special-reports/1083356/forest-clampdown-hurts-poor> (accessed 13 June 2018).

23 By 30 November 2016, the Judge Advocate General (JAG) reports 2,177 civilians tried or being tried in the Military Court (TLHR, Civilians Still Go to Military Court: Revealing of the statistics of civilians in Military Court, 3rd year [website, in Thai], 2017, <http://www.tlhr2014.com/th/?p=3498> (accessed 25 May 2017)).

cal parties in April 2018 (although with limited activities), and promising an election after the royal coronation.

### **2.3.1. The Unfree Ground Rule of the 2017 Constitution**

However, these relaxations and the upcoming election should be treated with caution. Even after the election, which has been promised but constantly postponed, civil and political rights and public space for civil society cannot be guaranteed. Not only will the election be held in an environment in which freedom of expression and political rights are not respected, but it will also be held under the auspice of the 2017 Constitution, which was drafted without genuine public participation. The Constitutional referendum that was organized in August 2016 was administered in a way to ensure the support of the NCPO's draft Constitution instead of enhancing public scrutiny and deliberation on the draft. More than 200 legal cases were brought against the people who attempted to campaign on the referendum (some cases are brought under the NCPO Order 3/2558(2015) which prohibits political gathering or Article 116 (on sedition) of the Criminal Code). Some of them are being prosecuted in the Military Court<sup>24</sup>.

### **2.3.2. Restricted Political Parties**

In this environment of restricted freedom of expression and violations of civil and political rights, the election campaign is and will be tightly controlled by the NCPO. Although the NCPO now allows political parties to be formed, the parties cannot organize a meeting and can only organize general assemblies upon approval of the NCPO<sup>25</sup>.

Without enabling an environment for free and fair election and for open political discussion, it is unlikely that the coming election alone could bring a genuine democratic change where human rights are respected and the civil society

could thrive and actively be part of Thai state political and public affairs.

### **2.3.3. NCPO's Influence after the Election**

The Constitution was also designed to maintain the NCPO's influence in Thai politics. It includes provisions (Section 65) that require the subsequent governments to follow the so-called 20-years National Strategic Plan drafted by an NCPO-formed committee.

The National Strategy Committee formed to draft the Plan comprises mainly commanders of security forces and those in political or official positions appointed by NCPO. Article 5 of the National Strategic Plan Formulation Act 2017 further strengthens the requirement to follow the Strategic Plan by forcing the future (elected) government's policies and national development plan, including the national security plan, to be developed in accordance with the Plan. Any failure to do so may be considered illegal.

In addition to the control over future policies, Section 279 of the Constitution allows any NCPO's announcement, order and act, both issued before the Constitution comes into effect and thereafter, to remain intact and legitimate until the (new) government enacts a law to revoke a particular order. The NCPO administrative orders could be proclaimed void or amended by a Prime Minister's order or a Cabinet Resolution. Given the fact that a law drafting process may take substantive time and requires strong political will, it is unlikely that those human rights violation orders would be revoked in due time. Besides, the 293 laws promulgated by the NCPO's appointed National Legislative Assembly<sup>26</sup> in the past 4 years would eventually carry trace of the NCPO.

24 See more details in the Thai Lawyer for Human Rights, TLHR's Legal Opinion on Prosecutions of "Referendum Suspects", 2016 [website], <http://www.tlhr2014.com/th/?p=3095> (accessed on 22 February 2017); and Thai Lawyer for Human Rights, 2017 [website, in Thai], New Constitution in Use but More than 104 "Referendum Suspects" are Still Being Prosecuted", <http://www.tlhr2014.com/th/?p=3924> (accessed on 22 February 2017).

25 Head of NCPO's Order 53/2560(2017) on Operations According to the Political Party Organic Act.

26 As of 18 June 2018.

## POLICY OPTIONS

Soon after the coup in May 2014, the European Union and the United States decided to implement a sanction policy on the junta and maintain limited relationship with Thailand. Nevertheless, since the Thai military regime announced the potential date of election to be in November 2018 (note, however, that this is postponed again to an unknown date), the EU and the US have changed their position towards Thailand. In December 2017, the Council of the European Union decided to resume political contacts with Thailand by pursuing “a gradual political re-engagement with Thailand”.<sup>27</sup> It hopes that by resuming political contacts, the EU and Member States could engage in meaningful dialogue with Thailand on human rights and democracy. The Council also suggested to the European Commission to resume negotiations on the EU-Thailand Free Trade Agreement (FTA), which was also suspended after the military took power. It stated, however, that the signing of a Partnership and Cooperation Agreement (PCA) and the full resumption of Free Trade Agreement (FTA) negotiations may only be pursued with a democratically elected civilian government.

The United States, in a similar vein, had partially downgraded the military-to-military relationship with Thailand and suspended about \$3.5 million in military assistance to Thailand following the coup. Nevertheless, the US has gradually engaged more with the Thai junta since the end of 2015.

This policy brief argues that resumption of diplomatic relationships may affect the potential of the Thai military government to return to substantive democracy and respect for human rights. Not long after the resumption of relationship, the Thai junta again postponed the election plan. In addition, control over exercising political rights was tightened as more people joined the campaign for election and democracy. Despite the NCPO’s promised roadmap for election, at least

208 individual cases were charged in the period February - June 2018 for joining activities calling for an election<sup>28</sup>. Although there is no concrete evidence that human rights conditions to trade and political relations could restrain human rights violations in Thailand, it has proved to have some benefit. For example, a few days before the Thai UPR report was to be reviewed by the UN Human Rights Council in September 2016, the NCPO used its authority under Section 44 to stop using Military Court to try civilians from 12 September 2016 onwards<sup>29</sup>. Although pending cases in the Military Court and any alleged crime committed before 12 September 2016 will still be tried before the impartial and incompetent Military Court, the cancelation of the use of Military Court against civilians is significant for the respect of human rights.

This policy brief, therefore, supports continued discussion between the international community and the Thai military junta with a clear message to ensure genuine democratic transition. This includes a definitive election roadmap, the respect of civil and political rights to create political environment for free and fair election, and the nullification of NCPO-issued laws and policies that violate human rights and liberties.

## CONCLUSIONS AND RECOMMENDATIONS

The human rights situation in Thailand after the May 2014 coup needs to be monitored closely. The military junta not only suppresses the democracy movement, but also exercises absolute power in the realm of public policy-making. By cutting out mechanisms that guarantee the right to participate in policy making and by restricting freedom of expression, community livelihoods are so vulnerable to human rights violations. It is alarming that the military junta is preparing the ground to maintain its influence over the future civilian governments, and how it is encouraging the militarization of the Thai

27 Council of the European Union conclusions on Thailand 15220/17.

28 One person may face more than one charge.

29 Head of NCPO’s Order 55/2559 (2016) on Actions on Some Cases under the Jurisdiction of the Military Court.

society. Civil society has been significantly weakening in the past four years of military and its roles will continue to be limited even after the transition.

In light of such development, this policy brief recommends that the international community, especially the EU:

1. *Ensures that all meetings between EU and Thai government officials note with concern the delay of democratic transition, the restriction of civil society, and attacks on human rights defenders.*

The EU should leverage its relationship with the Thai government to push for the development of genuine democracy. This means that every communication with the military junta should include demands for conditions of free and fair elections and not just allowing the participation of political parties. The EU and the international community should continue to place pressure on the Thai military regime to respect human rights in all aspects of its policies and ensure an environment favorable for civil and political rights to facilitate the transition to democracy both before, during and after the upcoming election.

2. *Reconsider the normalization of its relationship with the Thai government and use economic and trade conditions to advocate for policy changes in the Thai regime.*

The legitimacy of future agreements between the EU and Thailand can be questioned by citizens of both the EU and Thailand due to the inability for civil society to engage freely in the process of re-engagement. The EU should put conditions on continued re-engagement with the Thai state, including that the Thai government stop violating civil and political rights and allow for people's participation in policy making. Mechanisms that guarantee people's participation and economic and social rights, including for example, the requirements on environmental impacts assessment and city planning, and land acquisition, should be restored and strengthened. The conditions should also include the restoration to full democracy by repealing the NCPO's laws and orders.

3. *Continue to support the civil society actors, and human rights defenders in particular, in their activities to promote human rights.*

This includes the demands for the Thai government to dismiss the charges against human rights defenders and pro-democracy activists, in both the military and civilian courts.

4. *Closely monitor human rights violations and judicial harassment of Thai citizens advocating for democracy.*

The representatives of the international community and the EU in Thailand should attend and observe court and other legal hearings, and peaceful demonstrations. The presence of EU representatives is both a visible reminder to state officials that they are being monitored and to democracy activists that they are not alone.

## BIBLIOGRAPHY

- Bangkok Post, 10 October 2017, Prayut: General Election in 13 Months, <https://www.bangkokpost.com/news/politics/1340072/> (accessed 2 June 2018).
- BCC News, Thai Activists Charged Over ‘Military Torture’ Report [website], 26 July 2016, <https://www.bbc.com/news/world-asia-36894212> (accessed 2 June 2018).
- Council of the European Union, Council of the European Union Conclusions on Thailand, 15220/17 Subject: Thailand - Council conclusions (11 December 2017), adopted by the Council at its 3587th meeting held on 11 December 2017.
- iLaw, Verdicts on Three Computer Crime Cases-Section 44 to Control Influential People, but Summoning Community Members Instead [website, in Thai], 2016, <https://freedom.ilaw.or.th/report/มีนาคม-2559-พิพากษาสามคดีพรบคอมพิวเตอร์ฯ-ใช้ม44-คุมผู้มีอิทธิพลแต่เริ่มเรียกชาวบ้านรายงานตัว>, (accessed 1 June 2018).
- iLaw, Latest Statistics [website], 2017, <https://freedom.ilaw.or.th/en/content/latest-statistic> (accessed 15 June 2018).
- iLaw, Charges against Individuals after 2014 Coup [website], 2018, <https://freedom.ilaw.or.th/en/content/charges-against-individuals-after-2014-coup> (accessed 15 June 2018).
- iLaw, Report on the Exercise of Power under Section 44 of the Interim Constitution of Thailand [website], 2018, <https://ilaw.or.th/node/3938>, accessed 2 January 2018.
- iLaw, Report on the Exercise of Power under Section 44 of the Interim Constitution of Thailand 2017 [website], 2017, <https://ilaw.or.th/node/4827> (accessed 15 June 2018)
- iLaw, Report on the Exercise of Power under Section 44 of the Interim Constitution of Thailand 2018 [website], 2018, <https://ilaw.or.th/node/4828> (accessed 15 June 2018).
- iLaw, Section 116: When ‘Sedition’ is used as the obstruction of freedom of expression [website], 2017, <https://freedom.ilaw.or.th/en/blog/section-116-when-%E2%80%99sedition%E2%80%99-used-obstruction-freedom-expression> (accessed 2 June 2018).
- iLaw, Using Public Assembly Act to Threat People. No Demonstration of All Kinds [website, in Thai], 2018, <https://ilaw.or.th/node/3991> (accessed 15 June 2018).
- Nanchanok Wongsamuth, Forest Clamp Down Hurts Poor, Bangkok Post, 11 September 2016, <https://www.bangkokpost.com/news/special-reports/1083356/forest-clampdown-hurts-poor> (accessed 13 June 2018).
- Office of the High Commissioner on Human Rights, Thailand: UN experts condemn use of defamation laws to silence human rights defender Andy Hall [website], 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23095&LangID=E> (accessed 1 June 2018).
- Prachatai, Army sues Deep South human rights defender for exposing torture on TV [website], 2018, <https://prachatai.com/english/node/7626> (accessed 14 June 2018).
- Thai Lawyer for Human Rights, TLHR’s Legal Opinion on Prosecutions of “Referendum Suspects” [website], 2016, <http://www.tlhr2014.com/th/?p=3095> (accessed on 22 February 2017).
- Thai Lawyer for Human Rights, Civilians Still Go to Military Court: Revealing of the statistics of civilians in Military Court, 3rd year [website, in Thai], 2017, <http://www.tlhr2014.com/th/?p=3498> (accessed 25 May 2017).
- Thai Lawyer for Human Rights, New Constitution in Use but More than 104 “Referendum Suspects” are Still Being Prosecuted” [website, in Thai], 2017, <http://www.tlhr2014.com/th/?p=3924> (accessed on 22 February 2017).
- Washington Post, 19 June 2018, Coronation Plans Threaten Thai Election Schedule, [https://www.washingtonpost.com/world/asia\\_pacific/coronation-plans-threaten-thai-election-schedule/2018/06/19/1e29fc6a-73c1-11e8-bda1-18e53a448a14\\_story.html?utm\\_term=.1205fe160311](https://www.washingtonpost.com/world/asia_pacific/coronation-plans-threaten-thai-election-schedule/2018/06/19/1e29fc6a-73c1-11e8-bda1-18e53a448a14_story.html?utm_term=.1205fe160311), (accessed 30 June 2018).





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