



ศูนย์ทนายความเพื่อสิทธิมนุษยชน Thai Lawyers for Human Rights

109 ซอยสิทธิชน ถนนสุทธิสารวินิจฉัย แขวงสามเสนนอก เขตห้วยขวาง กรุงเทพมหานคร 10310

109 Soi Sitthichon Suthisarnwinichai Rd. Samsennok Huaykwang Bangkok 10310

Thailand/โทร(Tel): 096-7893172 หรือ 096-7893173 e-mail: [tlhr2014@gmail.com](mailto:tlhr2014@gmail.com)

Website: <https://tlhr2014.wordpress.com/>

---

*Immediately release 2<sup>nd</sup> February 2015*

## **Martial Law and the Military Court:**

### **Civil and Political Rights in Thailand (22 May 2014-15 January 2015)**

#### **Background**

On 22 May 2014, the National Council for Peace and Order (NCPO), led by General Prayuth Chan-ocha, seized the ruling power of the country. Martial law was imposed nationwide two days prior to the coup and in late July, the NCPO promulgated a new, temporary charter, the 2014 (Interim) Constitution of the Kingdom of Thailand. The NCPO appointed the Prime Minister, the Council of Ministers, members of the National Legislative Assembly (NLA), and members of the National Reform Council (NRC). The NCPO has issued a total of 246 Announcements and Orders; the majority of these measures have constricted the basic rights and freedoms of the people, led to the violation of human rights, and are in conflict with Thailand's obligations under international law. This is particularly the case with the use of martial law to detain people and the expansion of the jurisdiction of the military court to process civilians in certain kinds of criminal cases.

The exercise of power by the NCPO during the past seven months has resulted in at least 666 individuals being summoned to report themselves, the arrest of 134 individuals arrested while protesting peacefully, and the arrest of at least 362 individuals on other political charges. At least 36 individuals have been prosecuted under Article 112 of the Criminal Code in cases of alleged defamation, insult, or threat against the King, Queen, Heir-apparent, or Regent. All of these people have experienced the violation of their rights in different ways. Many have been held in custody for at least seven days without an arrest warrant being produced, charges being pressed, or the locations of their detention facilities being disclosed. Many have been denied the right to speak with a lawyer or receive visits from their relatives. Many have been denied bail and judicial review of their detention. The use of martial law, which permits seven days of arbitrary, incommunicado detention, creates a period of time in which grave violations of human rights can occur. For example, allegations have been made that officials have tortured detainees in order to coerce them to confess while they are

held under martial law. The information obtained has then been used to seek arrest warrants, press charges and further detain people while their right to temporary release is denied.

On 25 May 2014, the NCPO issued Announcement Nos. 37 and 38/2014 which authorized the Military Court to have jurisdiction over cases involving violations of the NCPO's orders and criminal offences related to national security committed after 25 May 2014; additional violations committed during the commission of offences related to national security were placed within the jurisdiction of the military court as well. On 30 May 2014, the NCPO issued Announcement No. 50/2014 which placed weapons-related cases within the jurisdiction of the military court, retroactive to 4.30 pm on 22 May 2014. The result of these three measures has been to extend the control of the military judicial system to civilians and civilian cases.

At present (January 2015), Thai Lawyers for Human Rights (TLHR) is providing assistance in 14 cases of civilians who are being processed in military courts. The total number of civilians being processed in military courts is unknown as the NCPO has not made this information publicly available. However, given that there are 25 military courts operating across the country, it can be estimated that a large number of civilian cases are being processed. In this report, TLHR provides a summary of the legal and practical problems and obstacles in cases processed in the military judicial system in comparison with those tried within the civilian judicial system.

### **Relevant Laws**

**Articles 4 and 7 of the Martial Law Act B.E. 2457 (1914)** stipulate that in the case of a war or a riot, the commander of the army in that area has the authority to decree martial law. In the area under martial law, civilian courts have the authority to examine and rule in ordinary cases, with the exception that the authorities have the power to place criminal cases committed under and during the time of martial law within the jurisdiction of military courts.

**NCPO Announcement No. 2/2557**, issued on 22 May 2014, regarding the decree of martial law for the entire country under the authority provided in Article 4 of the Martial Law Act B.E. 2457 (1914), cited the need to efficiently preserve peace and order and rapidly return happiness to all the people as the reason to decree martial law.

**Three measures decreed by the NCPO -- Announcement Nos. 37/2014 and 38/2014** decreed on 25 May 2014 and **Announcement No. 50/2014** decreed on 30 May 2014 -- stipulate that the following types of cases come under the jurisdiction of the military court:

1. Offences under the Criminal Code:

- A. Offences against the King, Queen, Heir-apparent, or Regent as stipulated in Articles 107 to 112.
  - B. Offences against national security as stipulated in Articles 113 to 118, except offences committed in areas in which the Internal Security Act B.E. 2551 (2008) or the Emergency Decree on Government Administration in States of Emergency B.E. 2548 (2005) have been imposed.
2. Offences under the Announcements or Orders of the NCPO:
- A. Offences under NCPO Announcement No. 7/2557 regarding the prohibition of political demonstrations. Violations are punishable by a maximum prison sentence of 1 year, a maximum fine of 20,000 baht, or both.
  - B. Offences under NCPO Announcement No. 39/2557 regarding the conditions of release of individuals who reported themselves following summons or arrest. Violations of the prescribed conditions are punishable by a maximum prison sentence of 2 years, a maximum fine of 40,000 baht, or both.
  - C. Offences under NCPO Announcement No. 40/2557 regarding the conditions of release of individuals who were detained under Article 15 bis of the Martial Law Act B.E. 2457 (1914). Violations of the prescribed conditions are punishable by a maximum prison sentence of 2 years, a maximum fine of 40,000 baht, or both.
  - D. Offences under NCPO Announcement No. 41/2557 stipulating that failure to report following a summons by the junta is a crime. Violations are punishable by a maximum prison sentence of 2 years, a maximum fine of 40,000 baht, or both, or the seizure and freezing of financial or other assets.
3. Cases in which a variety of alleged offences are bundled together and placed within the jurisdiction of the military court. In other words, if there is a case with a charge that falls within the jurisdiction of the military court which involves other charges outside it, the military court can examine and rule on all charges.
4. Cases of accusations of offences related to the possession or use of firearms, ammunitions, or explosives which are used in war or are unlicensed for use or possession per the Firearms, Ammunition, Explosives, Fireworks, and the Equivalent of Firearms Act B.E. 2490 (1947), whether or not other offences have been committed, for offences committed from 16.30 on 22 May 2014 onward.

**The Act on the Organization of the Military Court, B.E.2498 (1955)**, stipulates that the military court is under the authority of the Ministry of Defense with Minister of Defense as the

Commander.<sup>1</sup> In normal times, the military court only has the authority to examine and rule in cases of violation of military law and other criminal violations in which the defendant is a soldier or a civilian working under the military.<sup>2</sup> If there are crimes committed by many people together including both soldiers and civilians, the case falls within the jurisdiction of the civilian court, not the military court. But when martial law is imposed, the person who declares martial law is authorized to declare that other criminal cases may be tried in military courts.<sup>3</sup> In other words, cases of criminal violations by civilians can be placed within the jurisdiction of the military court.<sup>4</sup>

The military court is divided into 3 levels: the lower military court, the intermediate military court, and the highest military court. These are analogous to the court of first instance, the appeal court, and the supreme court in the civilian courts of justice. The lower military court includes twenty-two provincial military courts, twelve military circle courts, the Bangkok military court, and military courts attached to military units, which have not been decreed into force.<sup>5</sup> The parties are able to appeal a given judgment or order within 15 days from the date it was issued. This is different from the civilian courts of justice which allow the parties to appeal a given judgment or order within 1 month from the date it was issued.

But if martial law has been decreed in a given area, then the body of law for the processing of cases in **the “military court in abnormal times”<sup>6</sup> comes into force. The law is the same as in “ordinary times”** [i.e., not under martial law] **with the exception that the plaintiff and the defendant do not have the right to appeal a given judgment or order, no matter the situation.** Appeal of judgments and orders, including those made during the court examination, is forbidden.<sup>7</sup> For example, the denial of bail, the denial of requests to copy documents, and the decision to examine a case in secret cannot be appealed.

During the examination by a lower military court, there is a panel of three judges. This includes one military judge advocate with legal training who carries out the examination of the case

---

<sup>1</sup> Act on the Organization of the Military Court, B.E. 2498, Articles 5 and 10.

<sup>2</sup> Act on the Organization of the Military Court, B.E. 2498, Articles 13 and 16.

<sup>3</sup> Martial Law Act, B.E. 2457, Article 7.

<sup>4</sup> Martial Law Act, B.E. 2457, Article 7; Act on the Organization of the Military Court, B.E. 2498, Article 36.

<sup>5</sup> Act on the Organization of the Military Court, B.E. 2498, Article 7. At present, there are twelve provincial military courts in operation, which means that in total, there are twenty-five lower military courts in operation.

<sup>6</sup> Act on the Organization of the Military Court, B.E. 2498, Article 36.

<sup>7</sup> Act on the Organization of the Military Court, B.E. 2498, Article 61.

and ensures that it is in accordance with the law. There are then two commissioned military officers who are not required to have legal training who serve as representatives of the commander.<sup>8</sup> When martial law is in force, the Minister of Defense has the authority to order a judge from the military circle courts to join the two provincial judges to form a panel of judges to examine and rule in cases. In situations such as this, provincial military courts perform the function of military circle courts.<sup>9</sup> The Bangkok military court has the authority to examine and rule in every kind of case.<sup>10</sup> The Army commander-in-chief and the Minister of Defense have the authority to appoint and remove military court judges. The intermediate and highest military court judges are respectfully presented to the King for appointment and removal.<sup>11</sup>

**The (Interim) Constitution of the Kingdom of Thailand, B.E. 2557 (2014)**, Article 4, acknowledges that the human dignity, rights, liberties, and equality of the Thai people are protected following Thai custom and rule and following the international conventions to which Thailand has acceded, and are therefore enshrined in the Constitution.<sup>12</sup> Then indicates that this Constitution explicitly acknowledges that all of the rights enshrined in the international conventions and treaties to which Thailand is a state party are constitutionally-protected rights. In particular, **Article 14 of the International Covenant on Civil and Political Rights (ICCPR)** provides for a number of rights in the judicial process. These include the following:

**1. The right to be tried by an independent and impartial tribunal**

Article 14 (1) of the ICCPR stipulates that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The impartiality of a court based on the rule of law rests on three principles of independence, including the independence of the disputing parties, the independence of the state, and the independence of the society. This will ensure that the tribunal will perform their duties fully and effectively and without any interference from any other powers. The independence of the tribunal and the judges has three characteristics as follows:

A. **Judicial independence** is maintained via law to ensure that the performance of duties related to adjudication of cases is free from any outside influence.

---

<sup>8</sup> Act on the Organization of the Military Court, B.E. 2498, Articles 26 and 27.

<sup>9</sup> Act on the Organization of the Military Court, B.E. 2498, Article 20.

<sup>10</sup> Act on the Organization of the Military Court, B.E. 2498, Article 22.

<sup>11</sup> Act on the Organization of the Military Court, B.E. 2498, Article 10.

<sup>12</sup> Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014), Article 4.

- B. **Organizational independence** is maintained through the establishment of the Court as an independent entity based on the principle of the separation of powers. Structurally, in both legal provision and fact, the court and the judges shall not fall under the charge of other administrative or legislative organs.
- C. **Individual independence** is maintained by ensuring that the removal and transfer of a judge shall not be made possible against his will in order to guarantee the independence of the judge in the performance of his duties.

***2. The right to one's conviction and sentence being reviewed by a higher tribunal according to law.***

Article 14(5) of the ICCPR provides that everyone convicted of a crime shall have the right to review of his conviction and sentence by a higher tribunal.

The right to have one's conviction and sentence reviewed by a higher tribunal is essential as the judges who have made a given ruling may err in their decision and adjudication due to various factors, either from the judges themselves or from the evidence used in the adjudication. The errors can stem various factors including the following:

- A. Misuse of the law; and
- B. Mishearing of the facts.

Therefore, the right to have one's conviction and sentence reviewed by a higher tribunal aims to minimize fallacies in the hearing and adjudication processes and is a mainstay of ensuring justice.

***3. The right to a fair and public hearing.***

Article 14 (1) of the ICCPR provides that everyone shall be entitled to a fair and public hearing. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

**The principle of public hearing is a direct offshoot of democratic rule.** In the past, rulers had absolute power and the court and the operations of justice were shrouded in secrecy. Disputing

parties were treated as objects rather than rights holders in the judicial process. Basically, neither party had any influence on the process of hearings and examination, which placed an emphasis on outcome rather than rationale. This was a judicial process which took place behind closed doors.

But with the changing of the times and the transformation of many societies into democracies, there is a growing recognition of the principle of the separation of powers. The judicial process is regarded as an important power of the state, yet at the same time, the power of the state belongs to the people. **Therefore, in a democracy, the judicial process should be under the authority of the people who should have oversight and control over the hearing and examination processes.** This will cause the people to trust in the judicial process. In other words, the judicial process must be open to the public and the court should not be a palace of secrecy and horror. It must function as a transparent crystal palace. This principle is of the utmost importance, particularly in criminal proceedings.

#### ***4. The right to be presumed innocent until proved guilty according to law.***

Article 14 (2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

**In the past, the accused was treated as an object in court proceedings.** They had no rights whatsoever, including the right to presumed innocence. Basically, the accused was obliged to prove their innocence by whatever means, arbitrarily and unreasonably imposed by the tribunal, including being asked to prove their innocence by diving in water, walking through fire, etc. Therefore, the accused was treated as an object and was subjected to any means of proving innocence with no regard for their human dignity and without being treated equally to other persons.

**But as times have changed and societies have transformed to modern democracies,** there is a growing recognition of individualism and liberalism. **Every human being is regarded as a subject of the law and every human being is entitled to equal dignity.** A person can no longer be denigrated or treated as inferior to other fellow human beings. **The methods used to verify the truth in the past have become outdated.** Accused persons are now presumed to be innocent unless and until it can be prove that the person has committed the crime. The process of ascertaining guilt proceeds rationally.

### **Problems and obstacles**

#### ***1. Increased incidence of civilians processed by the Military Court***

TLHR estimates that following the expansion of the jurisdiction of the military court system, a large number of civilians have come to be processed in it. TLHR has observed proceedings in various military courts and notes that in only one court during one month, there have been more than 10 cases. The exact total number of cases being processed is not known since **the military court does not provide this information to the public**. The NCPO and the regime also do not make this data public. As a result, the number of cases, the charges and the number of civilians being processed in military courts is secret.

TLHR has provided legal assistance and followed and documented a wide variety of cases being processed in military courts. **This includes political cases** including lèse majesté cases, incitement of violence and sedition cases, arms possession cases related to political conflict, cases stemming from refusing to report oneself as requested by the NCPO and cases resulting from violation of the prohibition of taking part in political demonstrations larger than five persons. TLHR has observed that posting messages, sharing messages, or expressing opinions on social media or other actions which are construed as opposition to the National Council for Peace and Order (NCPO), such as scattering leaflets, have become the basis for bringing criminal charges on grounds of national security, such as Article 116 of the Criminal Code regarding the agitation and creation of unrest or disturbance among the people.

**Cases unrelated to politics have also been brought into the military court system.** For example, TLHR has learned of cases in which a member of an ethnic group in northern Thailand had a case brought against him because he possessed an unregistered cap gun for self-defense and use in farming. Bail was granted by the military court, but in the high amount of 120,000 baht. The defendant confessed to the crime, and the court's sentence, of 6 months imprisonment and a fine of 5,000 baht, was halved to 3 months imprisonment and a fine of 2,500 baht. The prison sentence was suspended. The defendant did not have the right to appeal the sentence. There are many other cases in which groups of young people or others have been accused of being involved in drug cases, or ordinary people have been accused of possessing unlicensed weapons, are processed in the military court system under NCPO Announcement No. 50/2557. **The expansion of the jurisdiction of the military courts has extensive ramifications for all civilians, not only those who are involved in cases with political motivations.**

## ***2. Martial law as the source of the judicial process during the NCPO era***

Under martial law, **military officials have power over civilian officials**. They are authorized to carry out a search, seizure and to detain a person in custody for up to seven days if s/he is



deemed to be an enemy or to have violated the provisions of martial law.<sup>13</sup> The persons can be held in any location of detention. In most cases, detention facilities have not been made known to the public and relatives and others have not been permitted to visit or to contact detainees. **The prime minister and leader of the NCPO** has even publicly praised the use of martial law and said that, **“it helps to speed up the judicial process, no warrant must be requested.”**<sup>14</sup>

As a result, **martial law has become part and parcel of the current judicial process.** That is to say, military officials may use their authority to arrest and detain an individual for seven days under martial law on the sole basis that s/he has come under suspicion. They do not need an arrest or detention warrant from the court. This seven-day period is one of danger which creates the opportunity for grave human rights violations. **For example, complaints have been made of the use of torture to coerce a confession or to provide information, enforced disappearance, etc.**

In addition, there have been cases in which information obtained during detention under martial law has been used to issue an arrest warrant under the Criminal Procedure Code, and then this arrest warrant has been activated for use when the initial period of detention is complete. Rather than following the steps in the Criminal Procedure Code in which the police bring the individual in question to appear before the court in order to formally bring criminal charges and request a remand warrant, there have been cases in which an individual has been charged and confessed via public press conference directly following detention under martial law. TLHR has even found that in some cases, even though an arrest warrant issued in accordance with the Criminal Procedure Code exists, an individual is still first detained under martial law in order to be interrogated before being taken to the police station to be informed of the charges. In both kinds of instances, information obtained from individuals while detained under martial law has been used to create an inquiry file. This provides an advantage to those bringing the cases and **is a shortcut of judicial procedure** in comparison to the usual process that mandates that officials must have credible evidence that an individual has committed wrongdoing and can only arrest and interrogate an individual after the court has granted an arrest warrant.

---

<sup>13</sup> Martial Law Act, B.E. 2457, Article 6 and Article 15 bis.

<sup>14</sup> “General Prayuth insisted Martial Law will not be lifted, it helps to speed up investigation without having to seek a court warrant” [“พลเอกประยุทธ์ ย้ำ ไม่เลิกกฎอัยการศึก ซึ่งทำให้การสอบสวนรวดเร็ว ไม่ต้องขอหมายศาล”], *Matichon*, 16 December 2014, Available online at [http://www.matichon.co.th/news\\_detail.php?newsid=1418715352](http://www.matichon.co.th/news_detail.php?newsid=1418715352) (Accessed on 16 December 2014).

In other words, martial law is an instrument that facilitates the compiling of evidence by military officials via the power to detain individuals under suspicion for the purpose of investigation. This is the procedure they use, in which information is recorded as evidence without having a lawyer present to listen during the interrogation. In addition, military officials have the authority to search and seize various materials without needing a warrant from the court. The individuals in question are therefore denied basic rights in the judicial process, although they have not yet been accused in any kind of criminal case. Once the process under martial law has come to an end, the military officials take the person in question to meet with the inquiry officials in order to enter the ordinary criminal justice process. It appears that the individual is informed of the charges and the investigation dossier is compiled before remand is requested from the military court. The police investigation dossier is compiled following the results of the interrogation. The evidence and information that the military officials compiled under martial law is brought to use as evidence to implicate the defendant in court. The use of detention and interrogation under martial law prior to the ordinary criminal justice process is therefore in contravention with the principle that individuals are presumed innocent until proven guilty.

As part of the investigation, the inquiry officials have a duty to compile evidence that demonstrates the innocence of the accused and provides reprieve, not only evidence that implicates him/her. **The lack of opportunity for police officials to compile other kinds of evidence that would be of benefit to the accused** is in conflict with international law that stipulates that the judicial process must be fair and rest on the presumption of innocence.

### ***3. Court proceeding are different from normal judicial proceedings***

TLHR has observed that there are a number of differences between the proceedings in military court and the normal courts of justice. First, **no copying of court material** -- i.e., the copying of the plaint, the order to deny bail, or even the court docket -- is permitted in the military court. No sufficient reason is given for the denial. For example, a TLHR lawyer requested permission to copy the court docket in order to include it in the case file. The court ruled to deny permission on the basis that the parties heard it read in the court. Normally, a defense attorney is entitled to have access to legal documents, unless it may affect the maintenance of public order or the public interest.<sup>15</sup>

In some cases, TLHR has found it necessary to **make an observation about the legal expertise** of the military court judges and officials. For example, when TLHR requested copies of

---

<sup>15</sup> Civil Procedure Code, Article 54, and Criminal Procedure Code, Article 15.

court documents, the military court clerk asked TLHR to identify the relevant articles of law and explain their relevance to their request.

Another observation regards the topic of impartiality and the independence of the military court judges. The judges are appointed by and under the command of the commander and the military court system is a unit under the Ministry of Defense. Therefore, the military court does not have the composition of a judicial entity and cannot be called a court in line with the principles of the separation of powers. **The origins and recruitment of the judges who conduct the cases therefore lack independence** and there are no guarantees in place to ensure that the judges carry out their duties impartially. This is not to mention the lack of confidence in their legal expertise. The adjudication of criminal cases relies on circumspection along with legal precision in order to parse the facts. However, the panel of three judges in military courts includes only one military judge advocate with legal training and the other two members of the panel are military officials who are not required to have legal training.

TLHR submitted a motion asking the Bangkok Military Court to refer the question of the impartiality of the judges to the Constitutional Court for consideration. But the military judges ordered the attorneys to change their request on the basis that it constituted a “violation against the NCPO.” The judges further noted that, “if [the attorneys] did not amend [the statement], the court will examine and issue an appropriate order.”

In addition, **the military court system does not provide court-appointed lawyers.** This is because usually the defendant is a soldier and if he has no lawyer, he can petition for help from a military judge advocate lawyer, whose job is to provide assistance to defendants who are soldiers. But this service does not extend to civilian defendants. Therefore, civilians may have to go through processing in the military court without access to court-appointed lawyers to provide them with basic legal counseling, help apply for bail, fight the charges or write a statement expounding the confession. This demonstrates that there is no guarantee of the basic right to legal counsel for the accused in the military court system.

The next point regards **the detention and remand processes.** During the pretrial stage, the detention and remand process is still quite complicated. In cases in which the alleged offender is granted bail, both the alleged offender and the guarantor have to be present at the military court every twelve days when a request for remand is filed. This is different from ordinary criminal court whereby the alleged offender does not need to be present at the court every time. The requirement has caused

inconvenience to both those accused and their guarantors who live in the provinces or are busy with their work. They must expend additional money and time to appear before the court.

TLHR has also observed **delays in the indictment process**. In many national security cases, for example, police officials often claim to have compiled all evidence but to be awaiting the signature of the Commander of the Royal Thai Police. Frequently, the signature is only obtained right at the upper limit of pretrial detention, 84 days. During that interval, the alleged offender must be held in custody in the prison. In addition, TLHR has observed that the indictment by the military judge advocate often takes place on the last day of pretrial detention and after working hours. On the day of indictment, neither is the accused brought to the court nor is the indictment read to him. In many cases, the defendant must wait for many months before he receives a copy of the indictment. This results in the defendant being detained in the prison for a long period without knowing the alleged crimes with which he has been charged. The defendant loses the opportunity to study the indictment, contact family and lawyers, and make decisions about how to proceed in the case.

Hearings in the military court are not in compliance with international legal standards which mandate that hearings must be public. Instead, **the majority of hearings in the military court system are secret**, especially in cases concerning the defamation, insults, or threatens against the King, Queen, Heir-apparent, or Regent (Article 112 of the Criminal Code). The Court has so far ordered that nearly all lèse majesté cases are to be examined in secret. All people not concerned with the case, even including representatives from foreign missions and international organizations, are asked to vacate the room. When lawyers have asked to make a copy of the court order to hold the hearing in secret, the military court judges have denied the request and given the explanation that the order was already verbally made and understood in the court.

In addition, TLHR has observed that **the military court does not have an inquiry process**. The Criminal Procedure Code stipulates an inquiry process that facilitates access to justice for the accused. In this process, the court orders the probation officers to locate facts about the history and social background, conduct, any prior record of the defendant, and other mitigating factors that should be considered before the court makes a decision about the punishment of the defendant or to grant a suspended sentence.<sup>16</sup>

---

<sup>16</sup> Criminal Code, Article 56, and Act on Probation Procedure under the Criminal Code. B.E. 2522 (1979), Article 11.

However, in one case in the military court, the lawyers requested that the court conduct an inquiry process and suspend the sentence of the defendant as he had been mentally ill for ten years prior to the incident in question. The court denied the request and gave the reason **that the military court does not have an inquiry process as there is no one to perform it**; instead, the court would draw on evidence and witness testimony. The lack of an inquiry process has a severely deleterious effect on defendants and places a heavy burden on them in carrying out the case in the court.

Further, military courts in certain areas are difficult and inconvenient to reach for members of the public interested in following cases. For example, although the court has not ordered that the case of civilians being tried on national security charges in Khon Kaen be examined in secret, the officials have not allowed family and people not involved in the case to enter the courtroom. The reason given is that the room is too crowded. In addition, provincial military courts are located inside military barracks and there are usually signs saying “Military Zone, Off-limits,” and strict inspection of people entering and leaving the barracks. This makes it difficult for ordinary citizens to attend and observe military court hearings.

Another difference between military and civilian courts is that hearings in Article 112 cases that are conducted secretly and even in other cases conducted publicly, **“the military court frequently bans observers and journalists from note taking in the court room.”**<sup>17</sup> The court claims that the distribution of information may be distorted and may therefore cause misunderstanding in public. As a result, trial observers are obliged to commit what happens to memory instead of being able to write it down.

#### **4. The right to temporary release**

The right to temporary release is a fundamental right in the judicial process according to the Criminal Procedure Code and international treaties, which provide that an alleged offender must be temporarily released save for exceptional circumstances.<sup>18</sup> **However, the military court has typically denied the right to bail for alleged offenders.** TLHR has found that only four out of eighteen persons accused in Article 112 cases processed in the military court system have been granted bail.

---

<sup>17</sup>“‘The last resort was destroyed,’ Military court bans note-taking during trials” [“‘เครื่องมือสุดท้ายที่ถูกทำลาย’ ศาลทหารสั่งห้ามจดบันทึกคดี”], *Prachatai*, 28 October 2014, Available online at <http://www.prachatai.com/journal/2014/10/56236> (Accessed on 7 December 2014).

<sup>18</sup>Criminal Procedure Code, Article 108.

In one case of an elderly defendant with health problems, the attorney has applied for bail five times and pledged to deposit as much as 2.5 million baht, but the court has refused to grant the request. The court often claims that since Article 112 cases carry a heavy punishment, there is a flight risk. This is the case even when the attorney has cited other factors, including health problems. For example, in one case the attorney cited the defendant's serious retinopathy, which, if not treated quickly enough, could result in loss of sight. The court still refused to grant bail and claimed that medical services exist in prison and if there is any danger, treatment can promptly be given.

However, there have been at least three political prisoners who have died while being held in custody as a result of a lack of treatment in recent years: (1) Mr. Amphon Tangnoppakul, aka "Arkong"<sup>19</sup>; (2) Mr. Surakrit Chaimongkol<sup>20</sup>; and (3) Mr. Wanchai Raksanguansilpa<sup>21</sup>. These three deaths attest to the need to grant bail to defendants who have serious health problems and also the need to urgently reform medical services in the prisons.

**For the most part, the reasons cited by the military court to deny bail lack a legal basis, particularly in cases of alleged *lèse majesté*.** Legally, in order to deny bail, there must be a credible reason to believe that the alleged offender or accused may run away.<sup>22</sup> Claims about the gravity of the case or how the alleged actions of the defendant have traumatized the public cannot be cited as reasons to deny bail.

Nevertheless, in cases of violation of the orders and announcements of the National Council for Peace and Order, such as the violation of a summons to report or participation in a political

---

<sup>19</sup> "'Arkong' died after severe stomach pain since Friday, his wife said 'You are going home; you are now released'" ["'อาภอง' เสียชีวิตหลังปวดท้องหนักตั้งแต่วันศุกร์ภรรยาบอก 'กลับบ้านเรานะตอนนี้เค้าปล่อยตัวแล้ว'", *Matichon*, 8 May 2012, Available online at [http://www.matichon.co.th/news\\_detail.php?newsid=1336449341](http://www.matichon.co.th/news_detail.php?newsid=1336449341) (Accessed on 9 December 2014).

<sup>20</sup> "Shooting suspect who killed Suthin died in prison, mom suspected he died of being tortured since he was a Red Shirt" ["ผู้ต้องหายิงสุทิน' ตายปริศนาในคุกแม่สงสัยอาจโดนซ้อมเพราะเป็นเสื้อแดง"], *Prachatai*, 29 August 2014, Available online at <http://www.prachatai.com/journal/2014/08/55291> (Accessed on 9 December 2014).

<sup>21</sup> "Red Shirt prisoner convicted for burning Udon Provincial Hall passed out and died in Lak Si Prison" ["นักโทษแดงเผาศาลากลางอุดรฯเป็นลมล้มพับตายคาคุกหลักสี่"], *Manager*, 28 December 2012, Available online at <http://www.manager.co.th/Politics/ViewNews.aspx?NewsID=9550000157563> (Accessed on 27 December 2014).

<sup>22</sup> Criminal Procedure Code, Article 108/1

demonstration or the accusation of agitating to create unrest among the people under Article 116, the military court has had a tendency to allow bail for temporary release. In addition, in cases about weapons or preparation of acts of terrorism and cases of *lèse majesté*, the court has granted temporary release in some cases. For example, in the case of Chu Seng Sae Kwo, or Small Bandit Aneeya, accused of committing *lèse majesté*, the lawyer petitioned for bail citing health reasons and also noting that the actions for which he was charged were carried out in good faith. The military court granted bail with a guarantee of 400,000 baht. Another example is the case of those being processed on the accusation of preparation of acts of terrorism, or the Khon Kaen model case; the majority of the defendants have been granted release on bail.

### 5. *Verdicts*

In cases stemming from the refusal to report oneself as ordered by the NCPO and for participation in political demonstrations in which the accused have pleaded guilty to the charges, the military courts have already sentenced them. The punishments were prison terms of three to six months and fines of 3,000-10,000 baht. All of the prison terms were suspended for two years. **The result of these verdicts has been the criminalization of peaceful assemblies and opposition to the unjust power of the state.**

The military court has already ruled in one war weapons case of possession of three bombs. The court sentenced the accused to ten years and reduced it to five years as he pled guilty. In this case, the military court did not consider the defendant's contribution to society and the lack of a prior record as reasons to reduce the sentence. Given that the Military Court is a single-tiered court, the accused could not appeal the verdict in order to ask for a reduction in punishment. This means that he did not have the opportunity to receive the fairness he could have accessed if his case has been tried in an ordinary court.<sup>23</sup>

The military court has already ruled in two *lèse majesté* cases in which the defendants confessed. The Bangkok military court sentenced the two defendants to **ten years and nine years in prison**, respectively. Given the confessions, the terms were reduced by half to five years and four years and six months, respectively. The sentences were not suspended. TLHR has observed that the

---

<sup>23</sup> "Woraphon sentenced by Military Court to ten years for possessing weapons and ammunitions in violation of NCPO Announcement" [ศาลทหารพิพากษาจำคุก 'วรพจน์' 10 ปีขู่ห้ามมีเครื่องกระสุน-ยุทธภัณฑ์ไว้ในครอบครองฝ่าฝืนประกาศศคสท.], 9 December 2014, *Prachatai*, <http://www.prachatai.com/journal/2014/12/56903> (Accessed on 10 December 2014).

sentences handed down by the military court in *lèse majesté* cases are more severe than those issued by civilian courts. Typically, the civilian court has sentenced at the level of five years per count, with reduction by half to two years and six months in the case of confession. The more severe penalties handed down by the military court echo the policy announced by General Prayuth Chan-ocha to the Parliament **that this government takes it as a mission to protect and shore up the monarchy** by using legal measures, psycho-social measures and the information and communication technology system to hold “badmouth loose cannons” or those with “malicious aims to undermine the monarchy” to account.<sup>24</sup>

TLHR has also observed that the prosecution of cases of alleged *lèse majesté* under Article 112 is creating fear among the people inside and outside the country. This is a result of the offence being placed with the jurisdiction of the military court operating during abnormal times, and the concomitant lack of bail and punishments twice that of the civilian court system. Some citizens who think that they may be at risk, whether they have actually committed a potential offence or are worried about becoming the target of malicious persecution, have decided to go into exile or **seek political asylum** in various countries in order to avoid potential prosecution. In some cases, the families of those individuals were threatened<sup>25</sup> and in others, their passports were revoked in order to pressure them to report themselves to the authorities.<sup>26</sup>

## **6. The right to review by a higher tribunal**

Appeal to a higher tribunal is prohibited in the military court during abnormal times, which is when martial law has been decreed, and therefore the parties to a case are denied the right to review of a given order or decision. TLHR has submitted petitions noting that the Act on the Organization of the Military Court, B.E. 2498, and the Announcements of the National Council for Peace and Order extending the jurisdiction of the military court to civilians are contra to the Constitution and requesting that the military court forward the petition to the Constitutional Court for review. **However, the military**

---

<sup>24</sup> “Policy statement of the Council of Ministers” [“คำแถลงนโยบายของคณะรัฐมนตรี”], 12 September 2014, Available online at [http://www.mof.go.th/home/Press\\_release/News2014/history\\_61.pdf](http://www.mof.go.th/home/Press_release/News2014/history_61.pdf) (Accessed on 1 December 2014).

<sup>25</sup> “Military harass family of former *lèse-majesté* prisoner in self-exile,” *Prachatai*, 29 July 2014, Available online at <http://www.prachatai.com/english/node/4252> (Accessed on 1 December 2014).

<sup>26</sup> “Passports of ‘Jakrapob-Jarupong-Sunai-Dong-Ros-Tang,’ Thaksin is still quiet” [“ถอนพาสปอร์ต ‘จักรภพ-จารุพงศ์-สุนัย-โด่ง-โรส-ตั้ง’ ส่วน ‘ทักษิณ’ ยังเงียบ], *Manager*, 30 June 2014 (Accessed 8 December 2014).



**court has refused and simply dismissed the petitions. There is no appeal of the decision and instead the military court continues its examination and judgment in the cases in question.**

The fact that the military court is **a single-tiered court puts pressure on the accused persons and causes many to choose to confess** rather than fighting the cases against them. This is because there is no right to appeal, and therefore no possibility of a conviction being overturned or the punishment reduced. Their preference is for confession as it results in the reduction of the punishment by half. This is particularly so in cases of alleged violation of Article 112, in which the punishment can be as high as fifteen years imprisonment per count; the defendants have confessed in the majority of the cases in the military court system.

### **Observations and recommendations**

**Safeguarding the right to a fair trial is key to ensuring justice.** If the NCPO deliberately ignores the principle through the use of martial law, the legislation of various actions as crimes, and by processing civilians in military courts, **the law and judicial process will become unjust and unfair.**

**To ensure the right to a fair trial and to protect the peoples' rights in the judicial process, especially access to justice, TLHR makes the following recommendations:**

1. Make information about cases of civilians processed in the military court system publicly available and accessible to ordinary citizens.
2. Cease the apprehension, arrest and detention of individuals under martial law. This creates a benefit for officials engaged in the criminal prosecution of civilians, but also creates opportunities for the violation of the right to life and security of civilians and makes them unable to access a fair and just judicial process.
3. Courts and judicial officials should interpret the law in line with the principles of the protection of the rights of the accused and should hold firm to the right to bail. The denial of temporary release should be exceptional.
4. Revoke the announcements of the National Council for Peace and Order that place civilians in military courts and return them to ordinary civilian courts.
5. Revoke the announcements of the National Council for Peace and Order that stipulate that some actions carry a criminal punishment, in particular participation in political demonstrations and not reporting following a summons by the NCPO.
6. Revoke martial law immediately.