

United Nations Office of High Commissioner for Human Rights

Human rights analysis of the 2014 Interim Constitution of the Kingdom of Thailand

1. Weak protection and safeguards for human rights

Article 4 of the Interim Constitution provides that “human dignity, right, liberty and equality for the Thai people protected by the democratic tradition of Thailand with the King as Head of State and by the existing international commitments of Thailand shall be protected.” I welcome this reaffirmation of Thailand’s international obligations for the protection of human rights under various treaties.

Nevertheless, some of the subsequent articles grant broad powers to the National Council of Peace and Order (NCPO) without adequate safeguards and will potentially undermine the protection of human rights. For example, article 44 provides that any NCPO order “for the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the Monarchy, national economics or administration of State affairs...is deemed to be legal, constitutional and conclusive.” Further, article 47 provides that “[a]ll of the announcements and orders of the NCPO ... are completely legal and constitutional.” These articles appear to render all actions and orders of the NCPO, including those which may violate human rights, legal and constitutional and without any qualifications in terms of their consistency with article 4 that requires respect and protection for human rights.

Article 21 specifies that an emergency decree can be issued for the purpose of “maintaining security of the Kingdom, public safety or national economic security, or averting public calamity or when it is necessary to urgently enact or confidentially deliberate a money bill related to taxes or currency.” Under international law, specifically article 4(1) of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a State Party, the declaration of a public emergency can only be made when the life of the nation or its existence is threatened. The scope of article 21 is broadly drafted and could authorize a derogation broader than that of ICCPR article 4(1). I strongly urge your Government to provide clear limits and guidelines on the exercise of article 21 to ensure its compliance with international law.

2. Denial of the right to effective remedy for serious human rights violations

Various international instruments provide the right to remedy for victims of human rights violations.¹ For example, the ICCPR places an obligation on state parties to ensure an effective remedy for any person whose rights or freedoms have been violated (article 2(3)(a)). This applies whether or not the alleged perpetrator acted in an official capacity. State parties are further obligated to ensure enforcement of such remedies, once granted (article 2(3)(c)). Similarly, article 14 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT) provides victims of torture the right to fair and adequate compensation.

Article 48 of the Interim Constitution grants an unqualified immunity for “[a]ll acts done by the NCPO which related to the seizure and control of the State administrative power on 22 May 2014, as

¹ Universal Declaration of Human Rights (article 8); International Covenant on Civil and Political Rights (article 2); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 14); International Convention on the Elimination of All Forms of Racial Discrimination (article 6); Convention on the Rights of the Child (article 39); The Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV) (article 3); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 (article 91); and the Rome Statute of the International Criminal Court (articles 68 and 75).

well as any act done by persons involved in such seizure or of persons being assigned by the Chief of the NCPO, or of persons being commanded by the Chief of the NCPO which done for such above act”. Such immunity applies “whether done on such date or prior to such date or after such date” even if such acts may be unlawful.

This broad immunity, including indefinite application would prevent victims of human rights violations from seeking remedies from a competent judicial, administrative or legislative authority, in contravention of their right to an effective remedy. Similarly, by denying victims access to the judiciary to seek remedies, the article could also violate ICCPR article 14(1) that provides that everyone should be entitled to “a fair and public hearing by a competent, independent and impartial tribunal established by law”.

Articles 44 and 47 of the Interim Constitution, which make orders and actions by the NCPO “legal and constitutional” also deny rights under the ICCPR articles 2 and 14 by preventing victims from contesting the legality of such actions in court. These articles could also violate CAT articles 12 and 13 which require a prompt and impartial investigation of any allegation of torture or ill-treatment.

3. Denial of the right to take part in the conduct of public affairs

ICCPR article 25(a) provides that every citizen shall have the right and the opportunity “[t]o take part in the conduct of public affairs, directly or through freely chosen representatives”. Under the Interim Constitution, the key institutions, including the National Legislative Assembly (article 6) and the National Reform Council (article 28), are to be appointed by the NCPO. The selection of the Constitutional Drafting Assembly involves more bodies, but the NCPO retains the ultimate selection authority (article 32). The absence of measures to allow public participation in the selection of these key institutions appears to violate ICCPR article 25(a). Further, the Interim Constitution does not refer to how the NCPO itself is established. Self-appointment of such an institution arguably violates ICCPR article 25.

ICCPR article 25(a) also provides that “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions...[t]o take part in the conduct of public affairs...” ICCPR article 2 in turn prohibits any discrimination based on “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The Interim Constitution disqualifies those who are holding or held a position within any political party within three years from being members of the National Legislative Assembly (art 8(1)) or the Constitution Drafting Assembly (art 33(2)), Prime Minister or a Minister (art 20(4)). Such disqualification could be considered as discrimination based on “political opinion” or “other status” under ICCPR article 2 and “unreasonable restrictions” under ICCPR article 25. Furthermore, similar restrictions placed on Buddhist priests, novices, monks or clergy from being members of the National Legislative Assembly (article 8(2)), the National Reform Council (art 28), or the Constitutional Drafting Assembly (art 33(3)) or to be Prime Minister or Minister (article 20) are unreasonably restrictive.

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