ASEAN Parliamentarians for Human Rights (APHR) presents the following recommendations to the Government of Thailand as necessary measures that must be implemented to ensure the full restoration of democracy and respect for fundamental freedoms in the country.

APHR's recommendations are based on two Fact-Finding Missions to Thailand as well as ongoing monitoring of the human rights situation. On 1 and 2 August 2019, a delegation of APHR members including current and former Members of Parliament (MPs) from Malaysia, the Philippines and Timor-Leste, met with representatives from civil society organizations, political activists, analysts, the Office of the UN High Commissioner for Human Rights, and several Thai political parties to assess the post-election situation and the state of democracy and human rights. In July 2018, APHR also conducted a similar Fact-Finding mission to assess the pre-election landscape.

APHR finds that elections held in March 2019 were critically flawed and failed to satisfy the military junta’s commitment to a return to democracy. Serious concerns have been raised about the electoral process which was held under a flawed Constitution designed by the outgoing military junta to ensure it would retain its grip on both the executive and legislative branches of government. The continuation of military control over Thailand’s political system and restrictions on fundamental freedoms, instead raise fears that opportunities for restoring democracy and improving human rights remain slim. However, below are a number of steps the Thai Government should immediately start implementing to reverse this trend.
APHR finds that the only avenue to restore democracy in Thailand is to amend the current Constitution to ensure that all government representatives are democratically elected, that the separation of powers is guaranteed, and that civilian oversight of the military is restored within a properly functioning system of checks and balances.

Adopted in August 2017 under the ruling National Council for Peace and Order (NCPO) junta, the current Constitution represents a major setback for democracy in Thailand. It creates a quasi-democratic state that disproportionately limits the power of elected members of Parliament and instead institutionalizes the military’s unchecked power.

Among its many problematic provisions, the Constitution gives the junta-appointed Senate decisive power in the selection of Thailand’s Prime Minister, seriously undermining the right of Thai citizens to choose their leaders. It also gives Thailand’s ‘independent’ institutions, such as the Election Commission and the Constitutional Court, disproportionately broad and unchecked powers. In light of the historical politicization of these institutions, this could allow for a repeat of previous instances of ‘judicial coups’ to overthrow democratically elected governments. The Constitution immunizes the military junta from being held to account for human rights abuses it committed and recognizes all remaining announcements, orders and acts of the NCPO as constitutional and lawful unless repealed or replaced by the Parliament.

While the Constitution was put to a referendum, over a hundred activists and journalists who criticized the proposed Constitution were arrested ahead of the vote. This period also saw severe restrictions on the rights to freedom of expression, association and peaceful assembly which seriously undermined the legitimacy of the vote.

In this context, it is clear that the March 2019 election did not bring democracy back to Thailand but rather was used as an attempt to bring legitimacy to a deeply flawed and undemocratic system. While amending the Constitution will prove difficult - it requires approval from more than half of the National Assembly, including a third of the junta-appointed Senate - it is the only way to fulfill the Kingdom’s stated commitment to democracy, justice and the rule of law.

The Government of Thailand must, therefore, ensure the independence of the country’s core institutions to install a functioning system of checks and balances in line with democratic norms capable of upholding the rule of law. It must also ensure that all provisions of the Constitution are in line with international law, protect fundamental freedoms and conform to democratic standards.
END JUDICIAL HARASSMENT OF MPS

For Thailand to benefit from a healthy and vibrant democratic system it must ensure the right to political participation of its citizens. To do so, it must end its ongoing judicial harassment of opposition MPs and immediately drop all politically motivated charges against them, as well as reverse politically-motivated sentences and bans for those denied the right to run for election.

The prevalence over the past 15 years of the misuse of election and criminal laws to systematically ban political parties and candidates that threaten military dominance is a direct contravention of the right to political participation and has severely undermined Thailand's democratic institutions.

Most recently, the Future Forward Party, which has taken a strong stance against the military junta and came third in the election, winning 81 seats in the House of Representatives, has become a key target of the authorities' judicial harassment.

Soon after the official announcement of the election results, its leader Thanathorn Juangroongruangkit was suspended from his duties as an MP. This occurred by order of the Constitutional Court, while it carried out an investigation into media shares he may have held when he applied to run for office in violation of Section 98(3) of the Constitution. If found criminally liable he could be barred from entering politics for up to 20 years, while also facing a prison sentence of up to 10 years and a fine. Other pro-government MPs facing similar allegations have been permitted to remain in Parliament. The Future Forward Party and its members are now facing a total of 21 judicial cases, leading to fears that the party might be disbanded.

The ongoing judicial harassment of MPs is a clear attempt at silencing critical voices in Parliament. It also risks undermining people's trust in the legal institutions. A healthy democracy cannot survive without a strong opposition ensuring constructive debate and providing checks and balances on the executive.
AMEND/REPEAL RESTRICTIVE LEGISLATION

There cannot be a fair and just democracy when restrictive laws, rules, and regulations remain in place. The Government of Thailand must immediately work towards the amendment or repeal of all laws and NCPO orders that put undue restrictions on peoples’ fundamental freedoms including their rights to freedom of expression, association, and peaceful assembly.

Despite the announcement that some orders issued during the rule of the NCPO had been repealed, a number remain on the books. Among those is the NCPO order that gives the military the power to hold civilians in custody without judicial oversight for up to seven days, and the NCPO order that criminalizes disobeying or showing defiance to NCPO summons even though the NCPO no longer exists.

Repressive laws, which have been used to criminalize peaceful dissent such as Article 116 of the Criminal Code relating to sedition, Article 112 relating to lèse majesté, the Cyber Security Act, and the Computer-Related Crime Act, also remain on the books. Furthermore, reported plans to set up an anti-fake news center raise fears that it might become yet another tool for the authorities to suppress critical voices.

These laws which criminalize peaceful expression have normalized self-censorship. A democracy cannot function if citizens fear jail solely for expressing their opinion. Criminalizing peaceful dissent also runs the risk of leaving society with limited avenues to express and channel frustrations and legitimate criticism.

ENSURE THE SAFETY OF HUMAN RIGHTS DEFENDERS

The Thai authorities must ensure that Human Rights Defenders (HRDs) can work in a safe and enabling environment free from fear of harassment, threats, surveillance, and physical attacks.

HRDs working in Thailand remain at risk. In a clear intimidation tactic, security forces have continued to visit and monitor activists, especially at critical times such as during the ASEAN Summit. In one of the most worrying post-election developments, instances of brutal physical violence against pro-democracy activists resulting in serious injuries have increased. At least three prominent activists, Ekachai Hongkangwan, Anurak Jeantawanich, and Sirawith “Ja New” Serithiwat were attacked. However, no thorough investigations of the assaults have been conducted.

APHHR is also concerned by reports that activists fearing for their lives in Thailand, continue to be at risk in neighboring countries. Several activists living in exile have reportedly disappeared while abroad, and others have been deported back to Thailand after seeking asylum in a foreign country. APHR is concerned that by collectively denying international protection to people who need it, ASEAN is creating a region unsafe for critical voices.
The unchecked power of the military and its allies and the harassment and attacks on the opposition and civil society will continue to set back the state of democracy and human rights in Thailand. While there is some space in the Parliament to reform the legal framework and amend the Constitution, for that to happen, the opposition has to survive and be able to work in a safe and enabling environment. Therefore, APHR calls on the Thai authorities to immediately:

- Amend the 2017 Constitution to ensure that all government representatives are democratically elected, that the separation of powers is guaranteed, and that civilian oversight of the military is restored within a properly functioning system of checks and balances;
- End its ongoing judicial harassment of opposition MPs and immediately drop all politically motivated charges against them and HRDs;
- Reverse politically-motivated sentences and bans of those political parties and candidates denied the right to run for election;
- Immediately amend or repeal all laws and NCPO orders that put undue restrictions on people's fundamental freedoms including their rights to freedom of expression, association, and peaceful assembly; and
- Ensure that HRDs can work in a safe and enabling environment free from fear of harassment, threats, surveillance, and physical attacks.