

No. 52101/ 483



PERMANENT MISSION OF THAILAND
GENEVA

/0 August B.E. 2560 (2017)

Dear Sirs,

With reference to my letter No. 52101/295 dated 19 April 2017 in response to your joint letter ref. AL THA 2/2017 dated 11 April 2017, concerning the criminal procedures against Ms. Sirikan Charoensiri, a Thai lawyer, and the request for additional information of the said case as well as the clarification on Thailand's derogations to the International Covenant on Civil and Political Rights (ICCPR) and measures to protect human rights defenders, I would like to transmit herewith the requested information prepared by the relevant agencies in Thailand.

In reassuring you of Thailand's continued commitment to cooperating with all Special Procedures under the Human Rights Council to promote and protect the human rights of all people, I remain,

Yours sincerely,

(Sek Wannamethee)

Ambassador and Permanent Representative

Mr. David Kaye,

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;

Mr. Maina Kiai,

Special Rapporteur on the rights to freedom of peaceful assembly and of association;

Mr. Michel Forst,

Special Rapporteur on the situation of human rights defenders;

Mr. Diego Garcia-Sayan,

Special Rapporteur on the independence of judges and lawyers;

Office of the United Nations High Commissioner for Human Rights,

GENEVA.

**Clarification by the Royal Thai Government in response to
the Joint Communication from Special Procedures regarding Ms. Sirikan Charoensiri**

1. In addition to the response made to the Special Procedures on 19 April 2017 (*Ref. Permanent Mission of Thailand to the United Nations in Geneva's Note No. 52101/295*), the Royal Thai Government wishes to provide additional information and clarification regarding the criminal procedures brought against Ms. Sirikan Charoensiri on charges of violations of (1) article 12 of the National Council for Peace and Order (NCPO) Order No. 3/2015 prohibiting gathering of five or more people for political purposes and (2) article 116 of the Thai Criminal Code prohibiting sedition as follows:

Additional information on the factual basis of the charges

2. According to the police files, Ms. Charoensiri has been charged due to the preponderance of evidence, including pictures, which indicated that she has been acting together with 14 other suspects on 25 June 2015 in the commission of the alleged offences under article 12 of the NCPO Order No. 3/2015 and article 116 of the Criminal Code. On 26 June 2015, 14 of the suspects were arrested and brought to the Bangkok Military Court pursuant to the arrest warrants issued by the Court. Ms. Charoensiri was also present at the Court on that day. On 27 June 2015, the police obtained a search warrant from the Criminal Court and found that Ms. Charoensiri attempted to hide the belongings of the arrested suspects in one of the suspects' car which was parked in front of the Court. Furthermore, the investigation team found pictorial evidence of Ms. Charoensiri's involvement with other suspects on 25 June 2015. The consolidation of evidence led to pressing charges on Ms. Charoensiri for the alleged violations of law in a similar manner with the other suspects.
3. As a result, Ms. Charoensiri was charged under the Samranrat Police Station's Case No.787/2558 along with the other suspects. This reflects that Ms. Charoensiri was not charged due to her capacity as a lawyer or human rights defender, but rather on the basis of the possibility of being one of the principals or accomplices in committing the alleged offenses.
4. At present, the case of Ms. Charoensiri is still under investigation of the inquiry officer of the Samranrat Police Station.

The charge on the violation of article 116 of the Thai Criminal Code prohibiting sedition

5. The offense of sedition is not a new or separate law. It has been in placed under article 116 of the Thai Criminal Code as an offense against the internal security of the Kingdom. By virtue of the NCPO Announcement No.37/2557 on 25 May 2014, certain criminal offenses relating to internal security committed thereafter, including those under article 116, are subjected to the jurisdiction of the Military Court for security purposes during this transitional period.
6. The allegations regarding Ms. Charoensiri involve her actions which took place subsequent to the NCPO Announcement No.37/2557 but prior to the NCPO Order No.55/2559 on 12 September 2016, which terminated the use of the Military Court to try civilians for offenses against national security. Nevertheless, there have not been legal proceedings against Ms. Charoensiri at this stage as the case against her has not been submitted to the Military Prosecution Office.

7. In any circumstance, the Government would like to reaffirm that the right to fair and public hearing is guaranteed in legal proceedings in the Military Court. The defendants are entitled to the right to legal counsel, the right to legal assistance, and the right to bail, among others.

Derogation to obligations under the ICCPR

8. Thailand is currently undergoing a transitional period. To achieve an effective and peaceful transition, it is important to foster public order and prevent actions that may hinder the efforts to reconcile and reform, especially those aiming to create social divisiveness and polarization.
9. Therefore, Thailand has exercised its right of derogation under article 4 of the ICCPR on the grounds of vital national security protection during this period, particularly in relation to the obligations under articles 12(1), 14(5), 19, and 21 of the ICCPR. These restrictions, however, are under constant review and are progressively relaxed or lifted when the situation improves.
10. Being fully aware of the effect on the rights and liberties of the people, the Government seeks to ensure that officials will carry out duties in good faith, only by necessity, and proportionately and that the non-derogable rights under the ICCPR are not undermined.

Safeguard of human rights defenders

11. Thailand recognizes the valuable contribution of human rights defenders to the promotion, respect, and protection of human rights and fundamental freedoms. The Government is fully aware of its duty to ensure that human rights defenders and lawyers can carry out their work in a safe and enabling environment. Human rights defenders, both women and men, are not being targeted.
12. In 2016, the Rights and Liberties Protection Department under the Ministry of Justice developed the Handbook to Protect Human Rights Defenders. This was done in collaboration with civil society partners and the OHCHR Regional Office in Bangkok. However, the Government recognizes that this is an initial step and that there are many challenges that remain. Therefore, we look forward to working closely with civil society partners in developing the specific details of the handbook to close the gaps.
13. Human rights defenders have also been included as a target group specifically in the draft 4th National Human Rights Plan. This is a reflection that human rights defenders have featured prominently in terms of recognition by the Government of their roles in the promotion of human rights.
14. In addition, having been established as an independent organization under the 2017 Constitution of the Kingdom of Thailand, the National Human Rights Commission (NHRC) has been strengthened as a key player in protecting human rights in the country. We envision that the NHRC will have a more proactive role in the future to come. For instance, the draft organic law, which is currently under consideration by relevant parties, would further empower the NHRC to bring cases and complaints to the court on behalf of the victims of human rights violations.

Ministry of Foreign Affairs of Thailand
8 August 2017