



No. 52101/300

PERMANENT MISSION OF THAILAND
GENEVA

25 November B.E. 2563 (2020)

Dear Sir and Madams,

With reference to your joint communication ref. AL THA 7/2020 dated 17 September 2020 concerning the cases of the fourteen individuals taking part in the protests of the Student Union of Thailand and Free youth Movement and the blocking of Facebook groups, I have the honour to transmit herewith the response of the said cases, as received from the Court of Justice, the National Security Council, and the Ministry of Digital Economy and Society and complied by the Ministry of Foreign Affairs. I hope that the clarification provided will provide a better understanding of the ongoing situation in Thailand and address your concern on this matter.

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. Clement Nyaletsossi Voule,

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

Ms. Irene Khan,

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

Ms. Mary Lawlor,

Special Rapporteur on the situation of human rights defenders;

Office of the United Nations High Commissioner for Human Rights,

GENEVA.

<p style="text-align: center;">Facts and Updates Concerning the Criminal Charges against Protesters and Media Restrictions</p>

General

- Since 18 July 2020, the Government has permitted a series of uninterrupted protests organized by different groups of protesters, including the *Student Union of Thailand* and *Free Youth*, who have participated actively in political and public affairs.
- The relevant agencies have also strived to ensure transparency in the management of such public gatherings by allowing the observation of these public gatherings by both domestic and international stakeholders, including the media, NGOs and human rights organizations.
- Indeed, Thailand's constitution guarantees the people's fundamental right to freedom of expression and freedom of assembly. However, such rights must not infringe upon or discriminate against the rights of others. They must also be balanced with the state's duty to maintain public order and to facilitate the public's freedom of movement within a safe environment.
- In particular, the Government has maintained close communication and cooperation with the Bangkok-based OHCHR Regional Office for South-East Asia by sharing information and views concerning the situation and by facilitating such on-site observations on many different occasions.

Managing Public Gatherings

- Since the protests in July, the people have enjoyed various opportunities to participate in political gatherings to address a wide range of issues, including education and gender equality as well as the future of the society that has been severely impacted by the COVID-19 pandemic and the ensuing global economic downturn. As the protests grew in scope and scale, the Government periodically assessed the situation and exercised measures that were proportionate to the situation. The police were deployed to protest sites to maintain public order and safety, as well as to minimize disruptions to the general populace. The authorities also exercised extreme restraint.
- There were only a few instances where the authorities, in particular the security agencies, assessed a foreseeable escalation of the protest as well as the possibility of aggravated tensions between different groups of protesters. Such assessment substantiated the decision to disperse the crowds in these instances, following a number of verbal warnings delivered to the protesters. However, even under these tense circumstances, the measures taken towards the crowds were temporary ones and discontinued as soon as the situation no longer posed imminent threats.
- One important observation shared by the OHCHR staff regarding overall police management of public gatherings, was that it was generally "well-managed and efficient", and followed protocols and measures to ensure well-rested and well-functioning police, giving importance to reducing tensions and avoiding confrontation with and among the different groups of protesters.
- The COVID-19 pandemic added another notable dimension to the public gatherings which meant that the relevant authorities have had to take additional, appropriate measures to ensure the rights and liberties of all to participate meaningfully and safely in public affairs. These measures include the enforcement of a number of relevant legislations, including the Thai

Criminal Code, the Public Assembly Act B.E. 2558 (2015) and the Emergency Decree as issued within the context of COVID-19.

Factual and Legal Basis of the Charges

- Regarding the cases of arrests, the relevant authorities deemed it necessary to proceed with a limited number of arrests on the basis of certain legislation and regulations, and in accordance with our current context.
- No arrests were made for the mere exercise of the freedom of expression. They were rather based on actions considered to be violations of related legislation, such as disturbing/obstructing traffic safety, threatening to pursue acts of violence, sedition and gathering in numbers or in a manner that posed risks of disease transmission, given the current context of COVID-19.
- The officials also made arrests only after a warrant or court's order had been issued pursuant to Section 78 of the Thai Criminal Procedure Code. Consistent with domestic laws and Thailand's international obligations, those arrested are also entitled to their rights to a fair trial and due process of law, in particular the rights to legal counsel, the right to defend themselves and to appeal under the judicial process.
- At present, the 14 arrested protesters mentioned in the allegations have been released.

The Charges Relating to Sedition and the Computer Crimes Act

- The Government has followed the principle of **checks and balances** in the enforcement of sedition charges and the Computer Crimes Act to ensure that such legislation was used only to target illegal activities and the dissemination of false information, and not to violate the freedom of expression. For instance, any **decision of the authorities to block or remove online content deemed violating the Computer Crimes Act (No.2) B.E. 2560 (2017)** must go through **stepped procedures** and a thorough vetting process with the approval of **the court of justice**.
- Within the context of a prolonged and deep-rooted political confrontation in Thailand, the Government has to prevent the dissemination of disinformation and misinformation, both online and offline, which are deemed to possibly lead to the incitement of hatred, violence and further polarization between those segments of society who hold differing views.
- This possibility is acutely relevant to Thailand, with the resurfacing of divisiveness as reflected in the recent social media posts and hate speech which contain suggestive content and are a cause for alarm (both because of their frequency and in their potential to incite violence in society).
- Indeed, the views of the silent majority of the Thai people may emphasize different core values than those of the protesters. Therefore, relevant legislation, including the Computer Crimes Act and laws relating to sedition, have to be enforced to ensure that **the exercise of one's rights does not infringe upon the rights and reputations of others or instigate disturbances**.
- The Government would also like to assure that the Ministry of Digital Economy and Society has neither the policy nor intention to use the Computer Crimes Act against Facebook's Thai employees for any of the platform's involvement in the "Royalist Marketplace" case. Moreover, the restrictions on online groups and accounts deemed violating the law, including the Royalist Marketplace, followed due process, without discrimination.

- In another related example of due process, on 21 October 2020, the Thai courts rejected a Ministry of Digital Economy and Society order to shut down the website and media platforms of one media outlet after ruling that that Ministry did not meet its burden of proof to show that the outlet was spreading false information amid anti-government protests.
- Thai citizens representing different segments of society, including the *Student Union of Thailand*, the *Free Youth* and others critical of the Government's policies, continue to enjoy their exercise of the freedom of expression on various social media platforms.

Latest Developments in the Situation and the Way Forward

- As mentioned above, the Government has taken various measures, including facilitating public gatherings, to maintain the right balance between ensuring that individuals can exercise their rights to freedom of assembly and freedom of expression and protecting the rights of others in society and the safety and security of the general public.
- The Government believes that the Parliamentary process is the appropriate, official, channel under the Thai Constitution specifically structured for an inclusive and comprehensive discussion of public affairs. Therefore, it is the most suited forum for finding a durable solution in addressing the varying opinions expressed by stakeholders.
- The Government has already paved the way for a constructive and inclusive dialogue between all segments of the society regarding the revision of the Constitution – one of the major demands made by one group of protestors. On 24 September 2020, the Parliament approved the establishment of a Committee to consider the draft proposals to the Constitution. An extraordinary Parliamentary Session to find solutions for the current situation and recent protests was also convened on 26-27 October 2020.
- Following these sessions, the National Assembly convened a joint session on 17-18 November 2020 to deliberate on seven drafts of the constitutional amendments – six put forward by Members of Parliament and one proposed by over 100,000 eligible Thai voters. The National Assembly voted for two of these drafts to be considered in further detail, with a major focus being placed on the appointment of a constitution drafting committee. According to Thai parliamentary procedures, the session is the first of the three sessions required by law in order for the constitutional amendments to take effect. The next session is scheduled for December 2020.
- As the parliamentary process is still ongoing, the relevant agencies have utilised the available means deemed necessary to ensure that the process and its results are respected and that no specific group takes unlawful and coercive actions to bend decisions in its favour. In doing so, the Government assures that all law enforcement and decisions will be carried out in accordance with international standards and only used within the boundaries of the law.
- Finally, the Government reaffirms its commitment to support the freedom of assembly and the freedom of expression as fundamental rights guaranteed by the Thai Constitution and further protected by the country's obligations under **the International Covenant on Civil and Political Rights (ICCPR)**. The recent developments have been part of a dynamic process to become a vibrant, democratic society where the human rights of all are enjoyed under the rule of law.