

Mandates of the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: AL
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7 July 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 25/18 and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of threats and intimidation against **Ms. Sirikan 'June' Charoensiri**, a lawyer who volunteers with the association 'Thai Lawyers for Human Rights', for discharging her professional functions.

'Thai Lawyers for Human Rights' is a group composed of lawyers and human rights defenders that was established after 22 May 2014 to provide legal aid to civilians arrested and/or prosecuted by military courts and to monitor and document the human rights situation and human rights violations after said coup.

According to the information received:

Ms. Charoensiri is one of the lawyers representing 14 student members of the New Democracy Movement who were arrested and charged with violating order 3/2015 of the National Council for Peace and Order, which bans political gathering of five or more people, and with 'sedition' under section 116 of the Thai Criminal Code.

The 14 students were arrested in the early evening of 26 June 2015 and taken to a police station where they were charged. At 9.30 p.m. the same day, they were brought to the Bangkok military court for a pre-trial detention hearing. At approximately 00.30 a.m. on 27 June 2015, the military court ruled to remand the 14 students in custody for a period of 12 days, which can be extended to up to a total of 48 days.

On Friday 26 June 2015, Ms. Charoensiri assisted the 14 students after their arrest, during police custody and during the pre-trial detention hearing before the

military court. She drove to the military court with three other lawyers as her passengers and parked her car in front of the court.

Inside the court, each of the lawyers was requested by court officers to leave their bags and belongings in the lawyers' room before entering the court room. At the end of the hearing, Ms. Charoensiri returned to the lawyers' room to pick up her belongings and was informed by a bailman, who had been watching over the lawyers' belongings, that police officers had entered the room and attempted to search the lawyers' bags for the students' mobile phones. Once the bailman had informed the police that the bags belonged to the lawyers, the police officers had reportedly stopped their search. Ms. Charoensiri was further informed that the police also wanted to search her car for the students' phones.

At 00.30 a.m. on 27 June 2015, Ms. Charoensiri and her lawyer colleagues returned to Ms. Charoensiri's car where they found it was surrounded by more than 10 police officers, some in uniform and others plain-clothed. A high-ranking police officer, Police Major General [REDACTED], commander of the Sixth Division of the Metropolitan Police Bureau, allegedly presented himself and explained that the police wanted to search the car for the students' mobile phones. As the police did not present a search warrant and reportedly failed to provide sufficient legal grounds for the search, Ms. Charoensiri did not grant permission for her car to be searched. She explained that as a lawyer she could not give her clients' personal belongings and information to the police without their consent or a court order. She also noted that the police could have seized the phones at the time of arrest or in police custody.

The police nevertheless called a truck to tow Ms. Charoensiri's car to Chana Songkhraam police station. Since the truck experienced technical issues, at approximately 1.50 a.m., the police resolved to confiscate the car by locking one of the wheels, sealing all doors and surrounding it with iron fences. Police security came to watch over the car. Ms. Charoensiri and her lawyer colleagues decided to stay overnight to watch over the car from a nearby foot path in order to prevent the police from searching it in their absence.

At approximately 11.30 a.m. on 27 June 2015, Ms. Charoensiri went to Chana Songkhram police station to file a complaint regarding police abuse of powers under section 157 of the Thai Criminal Code. The police reportedly hesitated to accept the complaint and said they first needed to verify the allegation on site. Before the complaint could be registered, at approximately 3.05 p.m. Bangkok Metropolitan Police 6 Deputy Commander with the Superintendent of Samranrat police station arrived at the Bangkok military court where the car was parked with a search warrant. Ms. Charoensiri opened her car door at 3.30 p.m., allowing officials from the Office of Police Forensic Science to conduct the search.

Equipment in the car included case files from Thai Lawyers for Human Rights, the lawyers' personal computers and other devices such as tablets, and some of the students' belongings. Five mobile phones belonging to the students were seized. During the search, it is alleged that one police official took the mobile

phones, unsealed and unwrapped, outside the limits of the alleged 'crime scene' and returned them 15 minutes later to forensic officials who then put them into envelopes, seal them and sent them to the Office of Police Forensic Science.

At approximately 6 p.m. the same day, Ms. Charoensiri went back to the police station to pursue her complaint against Police Major General [REDACTED] and his colleagues. Together with her lawyer colleagues, she was called into the chief police investigator's office where he reportedly explained that the police had the right to carry out the search and that, if she were to file a suit, the police would subsequently file a suit against her for defamation, obstructing police performance, or for providing support to criminals by hiding evidence. Despite feeling threatened, Ms. Charoensiri insisted on filing her complaint, which was finally accepted at approximately 11 p.m. on 27 June.

On 28 June 2015, a Metropolitan Police Commissioner, Police Lieutenant General [REDACTED], allegedly told the press that important evidence was found in Ms. Charoensiri's car and that the police was considering whether to charge Ms. Charoensiri over this evidence. It is further reported that this declaration came before the mobile phones that had been seized were examined by forensic police. Such examination was scheduled for 29 June 2015 when the lawyers from Thai Lawyers for Human Rights had to witness the opening of the sealed envelopes containing the mobile phones.

On 29 June 2015, local police officers visited Ms. Charoensiri's parents in her hometown; they asked them to identify her in pictures and questioned them about her background.

Ms. Charoensiri has also lodged a complaint with the Lawyers Council of Thailand.

Concerns are expressed about the alleged threats and acts of intimidation against Ms. Charoensiri, which seem to be directly related to the discharge of her professional duties as a lawyer. Further concern is expressed about the possible 'chilling effect' such threats and intimidation may have on the independence of lawyers in Thailand, especially with regard to those who defend persons accused of crimes sent before the jurisdiction of military courts. Serious concern is also expressed that the 14 students are tried before a military court despite their status as civilians.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide information concerning the legal grounds for the search warrant issued authorising the search of Ms. Charoensiri's car and the seizing of items found therein.

3. Please provide information on the status of the complaint filed by Ms. Charoensiri concerning the police's abuse of authority.

4. Please indicate what measures have been taken to ensure that human rights lawyers in Thailand are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort, in line with article 14 of the International Covenant on Civil and Political Rights and the Basic Principles on the Role of Lawyers, inter alia.

5. Please provide detailed information on the legal ground for trying the 14 students mentioned above before a military court; explain in particular how such trials are compatible with international human rights standards, in particular article 14 of the International Covenant on Civil and Political Rights.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Michel Forst
Special Rapporteur on the situation of human rights defenders

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of the right of everyone to due process and a fair trial, as enshrined in article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand acceded on 29 October 1996. In its General Comment no. 32 concerning article 14, the Human Rights Committee noted that lawyers should be able to advise and to represent persons charged with a criminal offence without restrictions, influence, pressure or undue interference from any quarter (paragraph 34).

The above-mentioned facts also seem to be in contravention of the Basic Principles on the Role of Lawyers, in particular principle 16, which stipulates that Governments must ensure that lawyers can perform their professional functions without intimidation, hindrance, harassment or improper interference, and that they do not suffer, or be threatened with, prosecution or other sanctions, and principle 18 which prohibits the identification of lawyers with their clients or their clients' causes.

We would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 9, paragraph 3, point c), which provides for the right to provide legal assistance in defending human rights and fundamental freedoms; and
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Finally, the trial of the 14 students before a military court seems to be in contravention of their right to a fair and public hearing by a competent, independent and impartial tribunal established by law. As noted by the Human Rights Committee, trials of

civilians by military courts raise serious problems as far as the equitable, impartial and independent administration of justice is concerned and should therefore be exceptional (General Comment no. 32, paragraph 22). In this regard, we would also like to refer your Excellency's Government to the report of the Special Rapporteur on the independence of judges and lawyers (A/68/285) where she explains that military tribunals should have jurisdiction only over military personnel who commit military offences or breaches of military discipline, and only when those offences or breaches do not amount to serious human rights violations.