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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 15/21, and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of Ms. **Jittra Kotchadej**, an adviser to the Triumph International Labour Union (TILU), Ms. **Boonrod Paiwong**, the former TILU's Secretary-General, and Mr. **Soonthorn Boonyord**, a labour activist affiliated with the National Congress of Thai Labour.

According to the information received:

On 27 August 2009, around 400 women labour activists from the TILU, the Electronic and Mechanic Labour Union, and the World Garment Factory Labour Union, as well as members of non-governmental organizations working on labour rights, peacefully demonstrated to demand the assistance the Government promised/announced to 2,000 workers who were dismissed by Triumph International factories. The peaceful demonstrators headed first to the Government House and then the Parliament, with a view to speaking to representatives of these institutions, to no avail. Instead, law enforcement authorities reportedly used Long Range Acoustic Devices (LRAD) to disperse the demonstration. It is reported that many demonstrators were later diagnosed with auditory trauma due to the use of the LRAD by security forces.

On 27 January 2011, Ms. Jittra Kotchadej, Ms. Boonrod Paiwong, and Mr. Soonthorn Boonyord were charged by the public prosecutor under sections 215 and 216 of the Criminal Code for leading the peaceful assembly of 27 August 2009. Section 215 provides that “[i]f the offender is leading an act [which threatens violence or to cause a breach of peace], he/she shall be punished for the maximum of five years imprisonment or fined not exceeding ten thousands baht or both”. Section 216 states that “[w]hen an official orders any person assembled under section 215 to disperse and such person does not disperse, he/she shall be imprisoned for the maximum of three years or fined for the maximum of six thousands baht or both”. Arrest warrants were subsequently issued against Ms. Jittra Kotchadej, Ms. Boonrod Paiwong, and Mr. Soonthorn Boonyord who each had to submit assets worth 100,000 Thai Baht. They were granted bail after further submitting assets worth 200,000 Thai Baht each.

The trial of Ms. Jittra Kotchadej, Ms. Boonrod Paiwong, and Mr. Soonthorn Boonyord, before the Criminal Court in Bangkok, is scheduled for 23, 24, 28, 29, and 30 August 2012.

Serious concerns are expressed that the charges against Ms. Jittra Kotchadej, Ms. Boonrod Paiwong, and Mr. Soonthorn Boonyord may be linked to the exercise of their rights to freedom of peaceful assembly, opinion and expression. Further concerns are expressed about the use of Long Range Acoustic Devices which left many protestors seriously injured.

While we do not wish to prejudge the accuracy of these allegations, we wish to recall article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

We wish also to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the ICCPR provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Similarly, we would like to make reference to article 21 of the ICCPR, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may

be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We would also like to refer to the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27), which provides that “States should facilitate and protect peaceful assemblies, including through negotiation and mediation. Wherever possible, law enforcement authorities should not resort to force during peaceful assemblies and ensure that, “where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force” (Council resolution 19/35, para. 6)” (para. 89). In this report, the Special Rapporteur further calls upon States “ [t]o ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals” (para. 84 (c)).

In addition, we would like to recall 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, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually

and in association with others, at the national and international levels, to meet or assemble peacefully; and

- article 12 paragraphs 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Moreover, as 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 be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please confirm the legal basis of the charges against Ms. Jitra Kotchadej, Ms. Boonrod Paiwong, and Mr. Soonthorn Boonyord, and how these measures are compatible with international human rights norms and standards contained, inter alia, in the International Covenant on Civil and Political Rights and the Declaration on Human Rights Defenders.
3. Please explain how the use of Long Range Acoustic Devices is neither disproportionate, nor indiscriminate in the present case.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Jitra Kotchadej, Ms. Boonrod Paiwong, and Mr. Soonthorn Boonyord are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Frank La Rue
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freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
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