

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

REFERENCE: AL
THA 12/2014:

11 November 2014

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 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a **draft Public Assembly Act**, which may unduly curtail the right to freedom of peaceful assembly and the right to freedom of opinion and expression, if adopted without further changes.

On the basis of the information received, we are of the view that the following provisions raise a number of concerns vis à vis international human rights law and standards.

- Regime of authorization

It is reported that articles 7 and 11 of the draft Act request anyone seeking to organise a public assembly to obtain prior permission from an authorized body at least 24 hours in advance of a planned protest. This requirement reportedly does not meet international human rights law and standards which call for assemblies not to be subject to authorization, but at the most to a prior notification procedure to allow the authorities to facilitate the exercise of the right of peaceful assembly.

In addition, article 13 of the draft law provides that “[I]f the authorized body deems the public assembly notified is in breach of articles 8, 9 or 10, it must instruct the organizers to modify the public assembly within a period of time”. Articles 8 and 9 reportedly contain vague provisions in relation to applicable restrictions, including that a public assembly may be restricted in case acts may “cause disruption and public disorder”. It is reported that this wording does not meet the requirement of international

human rights law which require restrictions to be necessary in a democratic society and proportionate to the aim pursued.

Furthermore, article 13 does not provide those who have applied for permission to hold an assembly with the right to appeal before a judicial body, but only before the superior official of the police station where the public assembly is to take place. The decision by the superior official is deemed final.

- Policing of assemblies

Article 27 of the law further grants the competent official the power to “order a person to act or to refrain from committing certain actions regarding the use of device or property which may cause unnecessary nuisance to general public”. The scope of this paragraph appears to be rather wide and could be used to restrict freedoms of peaceful assembly and of expression.

Article 28 of the draft Act also gives rise to serious concern in that it provides “the competent official [...] who executes a plan or procedure to contain a public assembly as per articles 22, 23, 24, 25 and 26 shall not be subject to civil, criminal or disciplinary liabilities arising from the execution of their duties provided that such act is performed in good faith, is non-discriminatory, and is not unreasonable in the circumstances exceeding the extent of necessity, though it does not preclude the right of a victim to seek compensation from a government agency under the law on liability for wrongful act of officials.” This might run contrary to the principle of accountability of law enforcement authorities who have violated the rights to freedom of peaceful assembly and association.

- Liability of organizers

Article 17 of the draft Act provides for a number of responsibilities on organizers, including “[taking] responsibility and ensure that the public assembly is carried out peacefully and unarmed [...] and does not cause unnecessary disruption to the use of public place by general public” Further, under article 32 any organizer who fails to act in compliance with article 17 can be subject to maximum 2 year sentence and/or 40,000 Thai Baht fine. International human rights standards on the contrary indicate that organizers should not be held responsible for the violent behaviour of others.

Article 18 of the draft law further prohibits assemblers from “causing inconvenience to general public who want to use public way [...] or causing nuisance beyond reasonable expectations and without any due causes.” Reportedly, this wording is vague and could be used to arbitrarily restrict the right of peaceful assembly.

Article 30 of the draft law further provides that the organiser of public assembly may be subject to imprisonment term for minor reasons, including in case he/she failed to notify the competent authority of the intention to hold an assembly. Such penalty does not meet international human rights law and standards pertaining to the rights to freedom of peaceful assembly.

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.

Since 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 observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.

2. Please provide full details on the proposed draft law and explain how the provisions comply with Thailand's obligations under international human rights law.

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

Meanwhile, and in light of the above analysis, we call on your Excellency's Government to amend the draft Public Assembly Act with a view to address the aforementioned concerns. We stand ready to provide support and advice to your Excellency's Government on legislative reform in this field.

While remaining interested in receiving additional information, we are considering to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue in question.

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

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with alleged facts and concerns highlighted in this letter, we believe that the draft Public Assembly Act is not consistent with the obligations your Excellency's Government has undertaken with regard to the effective realisation of the right to freedom of peaceful assembly and of association and the right to freedom of opinion and expression, as enshrined in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights, ratified by Thailand in 1996.

In this regard, 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 to the Human Rights Council (A/HRC/20/27), in which the Special Rapporteur stated that "the exercise of fundamental freedoms should not be subject to previous authorization by the authorities..., but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others. Such a notification should be subject to a proportionality assessment, not unduly bureaucratic and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place" (para. 28).

In this report, the Special Rapporteur also called upon States "[t]o ensure that any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law, necessary in a democratic society, and proportionate to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness..." (A/HRC/20/27, para. 84(e)).

He further stressed the "importance of the regulatory authorities providing assembly organizers with 'timely and fulsome reasons for the imposition of any restrictions...'" (A/HRC/20/27, para. 42) and that "[i]n case an assembly is not allowed or restricted, a detailed and timely written explanation should be provided, which can be appealed before an impartial and independent court... which should take a decision promptly" (A/HRC/20/27, para. 90 and 42).

In addition, he made clear that States should "ensure that law enforcement authorities which violate the rights to freedom of peaceful assembly and of association are held personally and fully accountable for such violations by an independent and democratic oversight body, and by the courts of law" (A/HRC/20/27, para. 84(i)) and "ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have to the right to an effective remedy and obtain redress" (A/HRC/20/27, para. 84(j)).

In relation to the use of force to police assemblies, we would also like to refer to the Code of Conduct for Law Enforcement Officials (in particular articles 2 and 3) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (in particular principles 4, 9 and 13).

Finally, we would further like to refer to the best practices identified by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in the aforementioned report, in which the Special Rapporteur stressed that “[a]ssembly organizers and participants should not be held responsible and liable for the violent behaviour of others (A/HRC/20/27, para. 93)”; that “individuals exercising their rights to freedom of peaceful assembly and of association [shall be granted] with the protection offered by the right to freedom of expression”. (A/HRC/20/27 para. 84 (g); and that “[s]hould the organizers fail to notify the authorities, the assembly should not be dissolved automatically... and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment. This is all the more relevant in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer. In this context, the Special Rapporteur holds as best practice legislation allowing the holding of spontaneous assemblies, which should be exempted from prior notification.” (A/HRC/20/27, para. 29).