

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

REFERENCE:
AL/THA/2/2017

11 April 2017

Excellency,

We have the honour to address you in our capacities as the 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; 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 25/2, 32/32, 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 the criminal procedures brought on charges of sedition and prohibited gathering against Ms. **Sirikan Charoensiri**, a Thai lawyer and human rights defender, which may be directly linked to her legitimate activities related to the protection of human rights at the national and international levels, as well as to her cooperation with United Nations (UN) human rights protection bodies and mechanisms.

Ms. Sirikan Charoensiri is a lawyer and documentation specialist working for the non-governmental organization *Thai Lawyers for Human Rights*. The organization was formed on 28 May 2014 to raise awareness on law and human rights issues as they relate to orders arising as a result of the enforcement of martial law and the orders and announcements of the National Council for Peace and Order, and to provide legal aid to ensure access to justice and human rights protection. As part of her work, Ms. Charoensiri has represented 14 student activists arrested by the Thai authorities for their alleged participation in peaceful protests in June 2015.

Ms. Charoensiri was the subject of a previous communication sent to your Excellency's Government on 7 July 2015, case no. THA 6/2015, which was published in report A/HRC/31/79. We thank your Excellency's Government for the reply dated 10 July 2015. The reply contained information about the case of the 14 students represented by Ms. Charoensiri, but we regret that it did not provide information on allegations concerning Ms. Charoensiri.

Concerns relating to the National Council for Peace and Order's orders, in particular the restrictions these place on the rights to freedom of expression and freedom of peaceful assembly and association, have been raised in several communications sent by Special Procedures, most recently in communications sent on 22 July 2016 (THA 5/2016); 13 June 2016 (THA 2/2016); 27 May 2016 (THA 4/2016); and 25 February 2016 (THA 9/2015). We thank your Excellency's Government for the replies received on

3 June 2016 and 29 February 2016, but remain concerned about the continuous use of these orders to limit fundamental rights as alleged in the new information received.

According to the new information received:

On 27 September 2016, Ms. Charoensiri was notified by the Thai authorities that accusations against her had been made by [REDACTED], concerning alleged violations of article 12 of order 3/2015 of the Head of the National Council for Peace and Order (NCPO), prohibiting the gathering of five or more people for political purposes, and of article 116 of the Thai Criminal Code, prohibiting sedition.

Ms. Sirikan Charoensiri is likely to face trial in a military court as the offences appear to pre-date order 55/2016 of the Head of the National Council for Peace and Order of 12 September 2016, which phased out the prosecution of civilians in military courts.

Article 12 of order 3/2015 of the Head of the National Council for Peace and Order carries a maximum penalty of six months' imprisonment or a fine not exceeding 10,000 Thai Baht or both. Article 116 of the Thai Criminal Code prohibiting 'sedition' carries a maximum sentence of seven years' imprisonment.

The summons, dated 20 September 2016, were allegedly served following the attendance of Ms. Charoensiri at the 33rd session of the Human Rights Council in Geneva, where she participated in activities related to the human rights situation in Thailand on behalf of the International Commission of Jurists, and other leading international non-governmental organizations.

Ms. Charoensiri had been previously charged with the offences of giving false information regarding a criminal offence and refusing to comply with the order of an official, which were reportedly brought against her in relation to the legal aid she provided to the 14 student mentioned above. Although the recent summonses do not set out the precise grounds for the accusations, they appear to be related to the same situation.

Serious concern is expressed about the criminal accusations against Ms. Sirikan Charoensiri, which seem to be related to the performance of her duties as a lawyer and as a human rights defender. These accusations could also constitute an act of reprisal for her participation in the 33rd session of the Human Rights Council in September 2016. Furthermore, concern is expressed at the possibility that Ms. Charoensiri may have to face trial before a military court as order 55/2016, which mandates the phasing out of the prosecution of civilians before military courts, may reportedly not be applicable to her case due to the date of the alleged offences.

We are also generally concerned about the reported increase of legal proceedings brought against human rights defenders under the orders of the National Council for

Peace and Order and allegations according to which women human rights defenders would be particularly targeted.

In addition, we are concerned that the ongoing derogation made by your Excellency's Government on 8 July 2014 regarding articles 12(1), 14(5), 19, and 21 of the International Covenant on Civil and Political Rights (ICCPR), poses an additional burden on human rights defenders by opening the door for arbitrary acts against them. Such a situation contributes to the existing hostile environment for the exercise of fundamental freedoms in Thailand and seriously hampers the functioning of a striving democracy in the country.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to the situation described above.

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 detailed information on the grounds sustaining the charges of prohibited gathering and of sedition against Ms. Charoensiri, and explain how these accusations are compatible with Thailand's obligation under international human rights law.
3. Please provide information on the measures taken by your Excellency's Government to safeguard the fair-trial rights of Ms. Charoensiri, including the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.
4. Please provide information on whether Ms. Charoensiri will be tried before a civilian or a military court. If Ms. Charoensiri were to be facing trial before a military court, please explain how it would be compatible with Thailand's obligations under international human rights law, in particular norms and standards related to the right to a fair trial.
5. Please explain why Thailand's derogations to articles 12(1), 14(5), 19, and 21 of the ICCPR are still in place, and indicate how such derogations are compatible with article 4 of the ICCPR.
6. Please indicate what measures have been taken to ensure that human rights defenders, including women human rights defenders, and lawyers are able to carry out their legitimate work in a safe and enabling environment.

without fear of threats or acts of intimidation, harassment and prosecution of any sort.

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.

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

Diego García-Sayán

Special Rapporteur on the independence of judges and lawyers

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

The allegations concerning the recent summons for prosecution under charges of sedition and prohibited gathering seem to contravene article 14 (3) (a) of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand acceded on 29 October 1996, insofar as they reportedly did not set out precise grounds for accusations. We would also like to refer your Excellency's Government to the UN Basic Principles on the Role of Lawyers according to which Governments shall ensure, inter alia, that lawyers shall not suffer prosecution or other sanctions for any action taken in the discharge of their professional duties (see in particular Principle 16).

Further, we would like to refer to articles 19 and 21 of the ICCPR which guarantee the rights to freedom of opinion and expression and freedom of peaceful assembly respectively. The Basic Principles on the Role of Lawyers also expressly enshrine the lawyers' right to freedom of expression and assembly (see Principle 23).

In addition, with regards to the allegation that Ms. Charoensiri, may be tried before a military tribunal, we would like to recall that in its General Comment no. 32 on article 14 of the ICCPR the Human Rights Committee noted that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. The Basic Principles on the Independence of the Judiciary also establish that everyone is entitled to be tried by ordinary courts (see Principle 5).

Furthermore, as regards prosecution under charges of prohibited gathering and sedition for activities related to the protection of human rights, reference should be made 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. Of particular relevance are 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. Similarly, article 12, (1) and (3), provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms, as well as for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms.

Finally, we would like to refer to Human Rights Council Resolution 24/24 which calls on States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its mechanism and representatives in the field of

human rights; and to take all appropriate measures to prevent the occurrence of intimidation or reprisals, including, where necessary, by adopting and consequently implementing specific legislation and policies and by issuing appropriate guidance to national authorities in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights from any act of intimidation or reprisal. We would also like to refer to Human Rights Council resolution 22/6, which provides for the right to "unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms".