

Mandates of the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
UA THA 2/2018

20 February 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 34/5 and 34/18

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged judicial harassment of peaceful demonstrators and activists, due to their participation in a series of peaceful protests.**

The allegations reportedly take place in a context of increased restrictions on multiple rights and fundamental guarantees, including on the right to freedom of opinion and expression and the right to freedom of peaceful assembly and of association.

Several joint communications were sent to your Excellency's Government by Special Procedures of the United Nations in relation to suspension of constitutional guarantees and the detention of human rights defenders, activists and political opponents in Thailand, following the military coup on 22 May 2014, issued on **28 May 2014 (see A/HRC/27/72, case no. THA 6/2014); 8 December 2014 (see A/HRC/29/50, case no. THA 13/2014); 8 June 2015 (see A/HRC/31/79, case no. THA 4/2015); 16 July 2015 (see A/HRC/31/79, case no. THA 7/2015); 25 February 2016 (see A/HRC/32/53, case no. THA 9/2015); 27 May 2016 (see A/HRC/33/32, cases no. THA 3/2016 and THA 4/2016); 13 June 2016 (see A/HRC/34/75, case no. THA 5/2016); 4 August 2016 (see A/HRC/34/75, case no. THA 6/2016); 24 January 2017 (see A/HRC/35/44, case no. THA 1/2017); 11 April 2017 (see A/HRC/36/25, case no. THA 2/2017); 30 June 2017 (case no. THA 4/2017); September 2017 (case no. THA 6/2017) and 22 December 2017 (case no. THA 7/2017).**

While we take note of the replies provided by your Excellency's Government to the communications **THA 6/2014, THA 13/2014, THA 7/2015, THA 9/2015, THA 3/2016, THA 4/2016, THA 6/2016, THA 1/2017, THA 2/2017, THA 4/2017**, we look forward to receiving your response to the questions raised in the other mentioned communications. We take note of the Governments' assertion that Thailand is undergoing a period of transition and reform. However, we consider that the enacted legislation has

been used to criminalize activists and unduly interfere with their rights to freedom of peaceful assembly and of freedom of expression.

According to the information received:

Over the past four years, since the May 2014 military coup, peaceful political gatherings have been outlawed and repressed. Vaguely worded legislation and decrees have also been used to target protestors engaging in assemblies. In particular, in 2015 NCPO Order 3/2015 was adopted which bans political gatherings of more than four people and prescribes prison terms of up to six months or a 10,000 baht (approximately 256 Euros) fine, or both, for violators.

1. Arrest and detention of activists' for their involvement in the "We Walk for Friendship" march

Against this backdrop, on 20 January 2018, a group of 12 individuals organized three separate walks from the Thammasat University campus in Rangsit, Pathum Thani Province, near Bangkok, to Khon Kaen. The march, coined "We Walk for Friendship" was aimed at denouncing the human rights violations in Thailand, including the increased restrictions on freedom of expression under National Council for Peace and Order (NCPO) rule.

On 23 January 2018, arrest warrants were issued against a group of eight individuals, **Mr. Lertsak Kumkongsak, Mr. Nimit Tieudom, Ms. Nuchanart Thanthong, Mr. Jumnon Nupian, Mr. Somchai Grajanseang, Ms. Sangsiri Teemanka, Mr. Anusorn Aunno, and Mr. Ubon Yuwa**, for their involvement in the organization of the 'We Walk for Friendship' march. They were accused of breaching article 12 of the NCPO Order 3/2015.

On 21 January 2018, in a separate incident, **Ms. Visinee Boontee, Messrs. Nitikorn Kamchu, Jaturavit Pandam, and Achom Srimutta**, as well as four other organizers of the 'We Walk for Friendship' march were arrested. They were briefly detained and interrogated at the Sub-District Administrative Organization Office in Lamsai, Ayutthaya Province, without having access to a lawyer. To date, no charges have been retained against them.

2. Judicial harassment of activists' for their involvement in the "27 January March" against the postponement of national elections

On 27 January 2018, a group of seven activists, **Mr. Sirawit Seritiwat, Ms. Nattha Mahatthana**, Democracy Restoration Group leaders, **Mr. Rangsiman Rome**, student activist, **Mr. Netiwit Chotipatpaisal**, human rights activist, **Mr. Ekachai Hongkangwan**, human rights lawyer, **Mr. Anon Nampa**, and student

activist **Ms. Sukrit Piansuwan**, organized a peaceful protest on the Skywalk at Pathumwan intersection in central Bangkok. During the march, several hundred people were protesting against the postponement of the next general election until 2019, despite the previous pledge from NCPO Head to hold the polls in November 2018.

On 30 January 2018, a complaint was filed by a high-rank military official from the NCPO, to the Bangkok's Pathumwan Police Station against the seven activists. They were accused of "inciting unrest" under article 116 of the Criminal Code (sedition) and under article 12 of NCPO Order 3/2015.

The accused are to be summoned in the coming days to acknowledge the charges brought against them at the Bangkok's Pathumwan Police Station.

We are concerned about the arrest, intimidation and charges brought against the abovementioned individuals as well as against peaceful protestors and activists in general. We also remain seriously concerned at the use of NCPO orders to crack down on protests and criminalize the expression of dissenting opinions in Thailand on matters of high public and political interest, where opinions should be freely expressed and debated. If true, these allegations are incompatible with the international human rights obligations of Thailand, in particular to the obligations to protect and promote the rights to freedom of peaceful assembly and freedom of expression.

In connection with the above alleged facts and concerns, we would like to refer to the articles 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR) that Thailand acceded to on 29 October 1996, which guarantee the rights to a fair trial, to freedom of opinion and expression and to freedom of peaceful assembly, respectively.

In this vein, we wish to refer to Resolution 12/16 of the Human Rights Council, which calls on States to recognize the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society, and which reminds that any limitation to the right to freedom of expression must be determined by law and conform to the strict test of necessity and proportionality.

We would also like to refer to Human Rights Council resolution 24/5 of 2013 which reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, as well as to ensure that any restrictions on these are in accordance with their obligations under international human rights law.

Moreover, article 4 of the ICCPR sets out strict boundaries within which a State can derogate from certain of its obligations under the Covenant when a public

emergency, officially proclaimed, threatens the life of the nation. Such derogations must be of an exceptional and temporary nature and strictly required by the exigencies of the situation.

We would also like to refer to 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 articles 1, 2, 5 and 6.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please confirm the legal basis for the alleged arrests and charges brought against the aforementioned individuals. Please indicate how these measures are compatible with the international human rights norms and standards governing the exercise of the rights to freedom of peaceful assembly and freedom of opinion and expression.
3. Please indicate what measures have been, or will be, taken to ensure that the rights to freedom of peaceful assembly and freedom of opinion and expression are respected.
4. Please kindly indicate what measures have been taken to ensure that human rights defenders 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.
5. Please indicate how the above-mentioned NCPO No. 3/2015 is compatible with international human rights standards, in particular, articles 4, 19 and 21 of the ICCPR.

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 responsible of 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

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