

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 4/2018

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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 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, detention and charges against peaceful protestors, in relation to the legitimate exercise of their rights of peaceful assembly and association and freedom of expression during a protest taking place in Thammasat University (Bangkok), on 22 May 2018.

Among the arrested peaceful protestors, eight of them have been leading the series of protests since January 2018 under the name 'We Want to Vote Movement', pushing for election to be held this year. They were arrested on 22 May 2018. These eight individuals have several pending charges against them due to their participation in previous protests.

1. Mr. Rangsiman Rome, 25 years-old
2. Mr. Sirawith Seritiwat, 25 years-old
3. Mr. Piyarat Chongthep, 27 years-old
4. Ms. Chonthicha Jangrew, 25 years-old
5. Mr. Anon Nampa, 33 years-old
6. Ms. Nuttaa Mahattana, 39 years-old
7. Mr. Ekkachai Hongkangwan, 43 years-old
8. Mr. Chokchai Pairatchata, 43 years-old

Other protestors were also arrested during the protest at Thammasat University on 22 May 2018:

9. Mr. Nikorn Wittayaphan, 57 years-old
10. Mr. Wiset Sangkhawisit, 59 years-old
11. Mr. Putthaising Pimchan, 61 years-old
12. Mr. Khiri Khanthong, 49 years-old
13. Mr. Wirote Trongngamrak, 29 years-old

Although the protestors mentioned above have now been released, they are still charged with offences allegedly constituting restrictions to the rights of peaceful assembly and association.

In addition, other individuals were charged on 29 May 2018 for their participation in the Thammasat University protest, among which:

14. Ms. Sripai Noonsee
15. Mr. Wanchalerm Khunsen
16. Mr. Thanawat Promjak
17. Mr. Prajin thanungkorn
18. Mr. Prasit Krutharote
19. Ms. Sunantharat Mookthree
20. Mr. Anurak Janthawanit
21. Ms. Chokdee Rumphuk
22. Mrs. Pranoom Poonthawee
23. Mr. Korakot Seangyenpun
24. Mr. Phunsak Srithep
25. Mr.Chanet Chanloha
26. Mrs. Pronwalai Thaweethanawanit
27. Mrs. Jidapa Thanahattachai
28. Mr. Somchai Thanachot
29. Mrs. Punyarat Nuntaphusitanon
30. Mr. Virut Nuntaphusitanon
31. Mrs. Pronnipa Ngambang
32. Mr.Wiboon Boonphattaraksa
33. Mr. Anusak Seangphet
34. Ms. Neeranuch Neamsub
35. Mrs. Wassana Keanla
36. Mr. Aod Aeangmoon
37. Mrs. Sirireang Keawsoom
38. Mrs. Malee Meangvai
39. Mrs. Kedsanee Chuenchom
40. Mr. Boriboon Kemgwaranon
41. Mrs. Amornrut Chokpaminkhul
42. Mr. Chayanin Khongsong
43. Ms. Alisa Bindusa
44. Mr. Phonchai Pratheepteantong
45. Mr. Neaung Ketsakul
46. Mrs.Naphatsorn Boonree
47. Mrs. Mutthana Autjima
48. Mr. Apist Subnapaphun
49. Mr. Nunthapong Panmad
50. Ms. Walee Yanahongsa
51. Mr. Manut Keawwikkit
52. Mrs. Yupa Seangsai

53. Mr. Phisarn Chunpan
54. Ms. Wassana Khonahun
55. Mr. Sukchai Tungjitsadudee
56. Mr. Wanchana Chunmanee
57. Mr. Somnuek Nakkhampun
58. Mr. Netiwit Chotiphatphaisal

According to the information received:

On 21 May 2018, around 300 protesters, including the eight leaders (information 1 to 8 on the list above), gathered in Thammasat University in Bangkok. They prepared for a protest planned the following day to commemorate the 4-year anniversary of military rule in Thailand and to call for election. They camped on site overnight with the intention of marching to the Government House in Bangkok.

On 22 May 2018, around 700 people assembled in Thammasat University, including individuals 1 to 13 mentioned above. They demanded a change of government and elections to be held in November 2018, as originally planned by the Government. The authority reportedly deployed around 1000-2000 anti-riot police and set up a barricade in order to block the protesters from conducting the march. At the same time, the Administrative Court refused to issue the injunction against order No. 3/2015 by the National Council for Peace and Order (NCPO) on the ban of political gatherings of five or more persons. The 13 protestors mentioned above were arrested.

The 13 protestors were subsequently charged with violation of order No. 3/2015 of the NCPO; Thai Criminal Code offenses, i.e. sedition (sec. 116), refusal of dispersal (sec. 216), assembly that may cause violence (sec. 215); and Road Traffic Act (sec. 108 and sec. 114 on obstruction of road traffic). All of them refused to sign the arrest memos.

On 24 May 2018, after being detained for two nights, the 13 protestors were additionally charged under article 8 (1) and (3) for obstructing gateway of state agencies offices and education institution, article 11 for organising public assembly while being ordered not to, and not complying with article 16 (1), (4), (7) regarding duties of organisers of article 19 of the Public Assembly Act. The defendants' lawyers obtained that the 15 peaceful protestors be released on bail amounting to THB1.5 million (USD+46,800) – THB100,000 per person, with condition that they abstain from participating in any political gatherings.

If convicted, the 13 peaceful protestors face up to seven years in jail. They are obliged to report to the Court on 11 July 2018 at 08.30hrs as part of condition for being released on bail.

On 29 May 2018, additional protestors were charged by the police (individuals 14 to 58 on the list above) and on 7 June 2018 had to report at Nang Lerng Police Station in Bangkok for notification of violating the ban on political gatherings of five persons or more without permission of the NCPO. This amounts to at least 58 cases of known protestors facing legal actions for exercising their rights to freedom of peaceful assembly and freedom of expression to call for elections and democracy during the Thammasat University protest. However, according to the information received, the number of victims is likely higher.

Among these individuals, Ms. Neeranuch Neamsub is a Thai Lawyers for Human Rights (TLHR) staff, who was assigned to observe, monitor and report on the demonstration in this capacity. During the course of these observations, she was wearing a TLHR ID name tag to distinguish her from the protestors. She had already been charged by the Khon Kaen Military Court for violation of order No. 3/2015 of the Head of NCPO in October 2017.

Serious concern is expressed about the criminal charges brought against the 58 peaceful protestors, which are related to the performance of their rights to freedom of peaceful assembly and freedom of expression. In particular, we express our concerns at the use of sedition charges to criminalize the exercise of freedom of expression.

We are also generally concerned about the reported increase of legal proceedings involving peaceful protestors and restrictions on freedom of peaceful assembly and association imposed under the ambit of order No. 3/2015 of the NCPO.

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), limits freedom of peaceful assembly and freedom of expression and open the door for arbitrary arrest of peaceful protestors. Such a situation contributes to the existing hostile environment for the exercise of fundamental freedoms in Thailand and seriously hampers the functioning of an institutional framework and society based on the rule of law and human rights.

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

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/or comment(s) you may have on the above-mentioned allegations.

2. Please provide detailed information on the grounds sustaining the charges against the 58 individuals 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 the 58 individuals, including the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law.
4. Please provide information on the criminal prosecution against Ms. Neeranuch Neamsub, a staff member of Thai Lawyers for Human Rights and further information on the reason why she is being investigated in her capacity as a human rights observer.
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 peaceful protestors 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.
7. Please indicate whether your Excellency's Government plans to lift the NCPO Order 3/2015 prior to the election to ensure that the right to peaceful assembly can be exercised in line with Thailand's international obligations.
8. Please provide information on whether the 58 protesters have been granted financial support under Ministry of Justice-administered Justice Fund.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

Clement Nyaletsossi Voule
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 above alleged facts and concerns, we would like to draw your attention to the following human rights standards.

First we would like to make reference to the rights to freedom of opinion and expression and freedom of association as set forth in articles 19 and 21 of the International Covenant on Civil and Political Rights, acceded to by Thailand on 29 October 1996. Article 19(3) sets out the requirement that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law.

We would like to recall the 10 Principles for the management of assemblies established by the Special Rapporteur on the rights to freedom of peaceful assembly and of association. According to Principle 2, every person has the inalienable right to take part in peaceful assemblies and no person should be held criminally, civilly or administratively liable for the mere act of organizing or participating in a peaceful protest. Regarding the accusations against Ms. Neeranuch Neamsub, Principle 6 states that: “Everyone shall enjoy the right to observe, monitor and record assemblies”. States have an obligation to protect the rights of assembly monitors. This includes respecting and facilitating the right to observe and monitor all aspects of an assembly, subject to the narrow permissible restrictions outlined in article 19(3) of the ICCPR.

In addition, we refer to the Best Practices elaborated by the Special Rapporteur on the rights to freedom of peaceful assembly and association. He recalls the report to the General Assembly of the then Special Representative of the Secretary-General on the situation of human rights defenders, who stated that “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. This is a valuable contribution to the effective enjoyment of the right to peaceful assembly. The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly” (A/62/225, para. 91).

Furthermore, as regards prosecution under charges of prohibited gatherings 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. Article 5(a) of the declaration states that everyone has the right, individually and in association with others, to meet or assemble peacefully. Finally, 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.