

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

REFERENCE:
AL THA 11/2020

11 January 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 41/12, 42/22, 43/4 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning criminal charges brought against peaceful protesters and human rights defenders for organizing and participating in demonstrations in recent months. At least 40 people have been charged under lèse-majesté rules include **Mr. Arnon Nampa, Mr. Panupong Jadnok, Mr. Parit Chiwarak, Mr. Tattep Ruangprapaikitseree and Ms. Jutatip Sirikhan**, who were the subject of a communication sent to your Excellency's Government on 17 September 2020 (AL THA 7/2020). We thank your Excellency's Government for the reply to the said communication. Nevertheless, we regret that some of our questions posed in said letter remained unanswered. Other leaders of recent protests have also been criminally charged, such as **Ms. Panasuya Sithijirawattanakul, Ms. Patsaravalee Tanakitvibulpon, Mr. Chanin Wongsri, Mr. Atthapol Buapat, and Mr. Sombat Thongyoi**. Furthermore at least 60 individuals have been charged with sedition.

According to the information received:

Since our last communication on the issue on 17 September 2020, peaceful protests have continued throughout Thailand. Different parts of the country experienced protests demanding for a new constitution, new rules regarding the monarchy and the resignation of Prime Minister Prayut Chan-o-cha. The most notable protests took place in Bangkok from 14 October to 18 October 2020 and on 17 and 18 November 2020. During the protest on 16 October 2020, 8 November 2020 and 17 November 2020, the police and security forces used tear gas and water cannons to disperse peaceful protesters, sometimes with warnings that did not allow enough time or space for protesters to withdraw. We have received allegations of disproportionate and indiscriminate use of force, as well as legal actions against journalists for being present and conducting their journalistic profession during the protests.

A special session of the Thai parliament took place on 17 and 18 November 2020 to discuss seven different proposals for amendments of the Thai Constitution. On 17 November 2020 the special session was accompanied by large protests outside the parliamentary building. That morning, a group called "Thai Pakdee" held a rally close to parliament in which they voiced their

opposition to the proposed constitutional changes. The Chairperson of the Senate met with the group to receive their demands and concerns.

In the early afternoon of the same day, a protest by the group “Free People” started in close vicinity. The police had set up barricades and water cannons and repeatedly used water laced with chemicals to keep protesters from approaching the barricades. Leaders of the protest who stood on a mounted truck reportedly requested the authorities multiple times to send an official to negotiate, but the authorities did not respond to the request.

At around 5 p.m., the police withdrew from Kiakai junction where both the Thai Pakdee and the Free People groups had assembled on different sides of the junction. The sudden and unannounced withdrawal of the police led to clashes between individuals from the two opposing groups in which water bottles, stones and other small objects were thrown. Private security guards linked to the various groups managed to control the situation after about 30 minutes. Six people were reportedly injured with firearms during the clashes, all of whom were taking part in the “Free People” demonstrations. Police are reportedly still investigating the matter, but no report has been published regarding these incidents to date. Other protests took place around the police headquarters on 18 November 2020.

On 19 November 2020, Prime Minister Prayut Chan-o-cha announced in a public statement that the Government would use “all laws and all articles” against the protesters. Subsequently, lèse-majesté charges under Article 112 of the Thai Criminal Code were used again, with at least 40 people charged, among them a 16-year-old and a 17-year old high-school students. The Deputy Police Commissioner of the Metropolitan Police Bureau announced on 14 December 2020 that at least 41 individuals would be prosecuted under Article 112 in Bangkok. Many of the accused also face multiple charges of lèse-majesté. The accused include prominent protest leaders, such as Mr. Parit Chiwarak (7 lèse-majesté charges), Ms. Panussaya Sithhijirawattanakul (3 lèse-majesté charges), Mr. Panupong Jadnkok (2 lèse-majesté charges), Mr. Arnon Nampa (3 lèse-majesté charges), Ms. Patsaravalee Tanakitvibulpon, Mr. Chanin Wongsri, Mr. Tattap Ruangprapaikitseree, Mr. Atthapol Buapat, and Mr. Sombat Thongyoi.

At least three people have also been charged under Article 110 of the Thai Criminal Code, which punishes the “violation of the Queen’s liberty”. According to latest information received, none of the accused are held in detention at the moment.

A number of protest organizers and participants, including high-school students, have also been charged under the Emergency Decree 2005 and with sedition under Article 116 of the Thai Criminal Code.

While we do not wish to prejudge the accuracy and the veracity of the above-mentioned allegations, we are gravely alarmed about the charges reportedly brought against peaceful protesters, the organizers of such protests and human rights defenders. Nobody should be held criminally liable for their peaceful participation in an assembly, and the expression of their opinion in defence of human rights. Should

these allegations be confirmed, they would be in violation of international human rights law, in particular the Articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, which guarantee the right to freedom of opinion and expression and the right to freedom of peaceful assembly.

Furthermore, we remain concerned that protesters face criminal prosecution for statements critical of the Government under existing sedition and lèse-majesté laws and that these laws are used to close civic space and create a chilling effect amongst peaceful protesters. We and other UN bodies have raised concerns about the lèse-majesté laws in the past, including in communications AL THA 7/2020, other examples are AL THA 1/2020, UA THA 1/2017 and UA THA 7/2017. We emphasize the inconformity of the application of article 112 of the Criminal Code and Computer Criminal Act with article 19 of the ICCPR. All public figures, including those exercising the highest political authority such as the heads of State, are legitimately subject to criticism and political opposition. As stated by the Human Rights Committee in General Comment no.34, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the ICCPR. We are also particularly concerned at the chilling effect that these legal provisions have on the legitimate exercise of the right to freedom of expression in Thailand. We are also concerned regarding multiple charges brought against high-school students who are minors, some of whom face very serious charges under lèse-majesté or sedition.

We are worried about allegations of excessive use of force by the police and the broad use of irritating chemicals in water cannons. In this regard, we would like to stress that the Government has an obligation to ensure that all use of force by law enforcement officials during protests is proportionate and necessary and to protect peaceful protesters from violence by third parties. Security forces should therefore try to keep protesters from opposing factions separate whenever possible and inform the organizers of all factions when they cannot uphold the separation or are planning to retreat, leading to potential clashes between factions.

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 any comment you may have on the above-mentioned allegations.
2. Please provide the full details of the factual and legal basis for the legal proceedings against the individuals mentioned above.
3. Please explain in which circumstances speaking and participating at a peaceful assembly and calling for peaceful political change can amount to charges of sedition under Article 116 of the Thai Criminal Code.

4. In your reply from 25 November 2020, you indicated that regarding sedition “such legislation was used only to target illegal activities and the dissemination of false information”. Please explain how calling for political change or constitutional reform or the participation in a peaceful protest (even if deemed illegal under Thai regulations) are considered acts of sedition.
5. Please explain what measures have been taken to apply the Human Rights Committee’s recommendation not to use lèse-majesté laws, the Computer Crimes Act, the Sedition Act and other regulations to suppress freedom of speech and freedom of peaceful assembly.
6. Please provide information about any measures taken to repeal the lèse-majesté provision in article 112 and to revise the Computer Crime Act, in order to bring these provisions in conformity with international human rights law.
7. Please provide information on the status of the investigation into the six gunshot injuries that occurred on 17 November 2020 in Bangkok.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

Moreover, we would like to inform your Excellency’s Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the allegation letter procedure and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency’s Government to clarify the issues in question.

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and while we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the international norms and standards applicable to the present case. We would like to refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, which guarantee the rights to freedom of expression and opinion and freedom of peaceful assembly respectively.

Regarding the right to freedom of peaceful assembly we would like to refer to the recently adopted General Comment No. 37 of the Human Rights Committee on Right of peaceful assembly ([CCPR/C/GC/37](#)), which stressed that "the possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly. [...] States are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to protect all participants and to allow such assemblies to take place in an uninterrupted manner".

In this regard, we would like to refer to Human Rights Council Resolution 24/5 which "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others".

Freedom of opinion and expression entails that "everyone shall have the right to hold opinions without interference" as well as that "everyone 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." This right includes not only the exchange of information that is favorable, but also that which may shock or offend. In its General Comment No. 34 on Freedoms of opinion and expression (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedoms of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. In its General Comment No. 25 on Participation in Public Affairs and the Right to Vote (CCPR/C/21/Rev.1/Add.7), the Human Rights Committee set out that: "In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. [...] It requires full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas."

We, once again, wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16. The Resolution calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in 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.

We would also like to refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and association in which he considered that the prohibition to publish material online solely on the basis that it may be critical of the government or the political social system espoused by the government is inconsistent with the rights to freedom of peaceful assembly, association and expression (A/HRC/41/41 para. 42).

We would like to reiterate the recommendations made by the Human Rights Committee during Thailand's second periodic review in 2017, in which it called upon your Excellency's Government to refrain from using the Computer Crimes Act (2007), the Sedition Act and other regulations to suppress freedom of speech and freedom of peaceful assembly, as well as guarantee and respect the rights to these freedoms (CCPR/C/THA/CO/2, paras. 35, 36, 39, 40).

In connection with the above arrest of activists, we would like to refer to the right not to be arbitrarily deprived of liberty and to fair proceedings before an independent and impartial tribunal, as set forth in articles 9 and 14 of the ICCPR. We wish to highlight that deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the ICCPR is arbitrary. Article 9 establishes in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law, and that anyone who is arrested shall be informed, at the time of arrest, of the reasons behind such arrest and be brought promptly before a judge for the purpose of legal assessment of detention.

In relation to the allegations indicating that the individuals mentioned above are being targeted because of their activities defending human rights, we would like to refer your Excellency's Government 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. In particular, we would like to refer to 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 and 6 of this Declaration are also relevant as they provide for the rights, individually or in association with others, at the national and international levels to meet, assemble peacefully; seek, obtain, receive and hold information on human rights including remedies to claim those rights; and freely publish and impart or disseminate to others view, information and knowledge on human rights.