

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

Ref.: AL THA 5/2023
(Please use this reference in your reply)

24 August 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 44/8 and 52/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the disbarment proceedings against Mr. Arnon Nampa, a lawyer and human rights defender, taking place before the Lawyers Council of Thailand (LCT) under the Royal Patronage.

Since 2014, Mr. Nampa has been a founding member of Thai Lawyers for Human Rights (TLHR) and has provided free legal assistance, including representation in litigation, to individuals in vulnerable situations. Since late 2020, he has been involved in the defense of individuals charged in at least 50 criminal cases, representing approximately 50 human rights defenders, pro-democracy activists, and political dissidents. He has handled highly sensitive cases, representing civilians before military courts after the May 2014 *coup d'état*, human rights defenders and activists charged under article 112 (lèse-majesté) of the Penal Code, as well as cases involving constitutional amendments, monarchy reforms, and environmental activism.

Several of the high-profile cases defended by him have been addressed by Special Procedures through Joint Allegation Letters and by the Working Group on Arbitrary Detention. The case of Mr. Nampa himself has also been included in these Joint Allegation Letters, AL THA 11/2020, AL THA 7/2020, and AL THA 4/2018. We thank you for the replies received. However, our concerns remain in the case of Mr. **Nampa**.

According to the information received:

The proceedings were initiated after he made a speech calling for reform of the Thai monarchy during a protest in Bangkok on 3 August 2020.

On that day, Mr. Nampa spoke at a Harry Potter-themed protest at the Democracy Monument on Ratchadamnoen Avenue in Bangkok. He addressed matters related to the monarchy and called for its reform, which is considered highly sensitive in Thailand. He addressed certain articles in the current constitution and subsequently adopted legislation, which he saw as giving the monarchy power beyond the democratic system. He also discussed issues that arose from the King taking up residency in Germany, the management of crown property, and the transfer of troops to the crown. Mr. Nampa's speech was transcribed, distributed, and translated into English.

He was among the first public figures to openly advocate for changes to the monarchy's role, breaking a taboo in a country where few dare to openly

discuss the institution. Since then, the reform of the monarchy has been one of the core demands of the democracy movement.

Disbarment Proceedings

The Lawyers Council of Thailand (LCT) is an independent public organization, established in 1957. Its mandate and responsibilities are set out in the Lawyers Act B.E. 2528 (1985). The objectives of the Council include ensuring the ethics of lawyers, promoting legal education and providing legal assistance. It also registers lawyers and issues them with licenses to practice law in Thailand. Members of the Council elect the president and committee members every three years.

The disbarment proceedings against lawyer and human rights defender Arnon Nampa stemmed from a complaint motion filed with the LCT on 7 August 2020 by Mr. [REDACTED], executive assistant to the Prime Minister's Office. Mr. [REDACTED] claimed to be acting in his capacity as a private attorney at Or [REDACTED] and [REDACTED]. He alleged that Arnon Nampa's behaviour during the protest on 3 August 2020 violated the disciplinary rules of the Lawyers Council of Thailand, as he "*distorted facts, delivered defamatory speech, incited unrest, caused damage, and showed contempt for the monarchy, with the aim to disunity in the country.*"

After the complaint was filed, a three-member Investigative Committee was established by the Committee on Professional Ethics of the LCT during Meeting No. 1/2564 on 13 January 2021. This Committee appointed Dr. [REDACTED] as the Chairperson. The information suggests that Dr. [REDACTED] was on a reserve list of individuals for promotion as a military-appointed senator, in accordance with NCPO Announcement No. 1/2562 regarding the Reserve List for the Selection of Senate Members under the Organic Act on the Acquisition of Senators B.E. 2561 (2018). That announcement had been signed by General Prayut Chan-o-cha as the NCPO leader. Therefore, Dr. [REDACTED] had allegedly benefited or stood to benefit from the exercise of power by General Prayut Chan-o-cha, whom Arnon Nampa criticized in his speeches at many protests he attended, including the protest on 3 August 2020.

On 11 May 2021, Mr. Nampa submitted a counter-claim statement, confirming that the conduct in question constituted the exercise of his right to freedom of political expression, and the comments were made in good faith for the benefit of the public.

Mr. Nampa also submitted a motion to have Dr. [REDACTED] removed as the Chairperson of the Investigative Committee due to his close links with the military government. He argued that appointing a person who had benefited or would stand to benefit from General Prayut's exercise of power to investigate Mr. Nampa's criticisms would render the investigation presumptively lacking in impartiality and unfair.

Nevertheless, the Committee on Professional Ethics rejected this motion on 18 June 2021. Mr. Nampa appealed this decision to the same Committee on 3 August 2021. The information suggests that the Committee ordered that the

appeal be inserted into the case file, and no ruling has been made on the merits thus far.

The initial date for both parties to appear before the Investigative Committee was scheduled for 24 November 2021. However, due to Mr. Nampa's pre-trial detention for participating in another protest, the hearing was subsequently postponed to 3 February and then to 7 April 2022. Witness examinations were conducted on 2 and 20 June, 18 July, 1 and 22 August, and 5 September 2022. The last two witness examinations are due to be held on 17-18 July 2023.

After these examinations, the Investigative Committee is expected to conclude the investigation report, which will be sent to the Committee on Professional Ethics, and later the Committee of the Lawyers Council, for their further action. These Committees have the power to affirm, revise or reverse the order or impose a penalty or take any measure against the accused lawyer.

Context of the disbarment proceedings

Currently, Mr. Nampa is facing charges in 24 cases, 12 of which involve a lèse-majesté charge, due to his involvement in pro-democracy protests between 2020 and 2022. All cases are related to the legitimate exercise of his human rights and fundamental freedoms, including freedom of expression and peaceful assembly.

Despite repeated submissions of bail requests to the Court, on 22 February 2022, in response to the 11th bail request, the Court finally granted bail and released him, subject to several restrictive bail conditions. However, despite the bail request being granted in this case, Mr. Nampa continued to remain under pre-trial detention in relation to other cases.

While we do not want to prejudge the accuracy of these allegations, we reiterate our serious concern about the charges against, and pre-trial detention of, Mr. Nampa. We are also very concerned about the disbarment proceedings against Mr. Nampa, which appear to be an arbitrary reprisal for the legal services he provides to, inter alia, dissenting civil society activists, as well as for exercising his right to freedom of expression. If confirmed, the events described above would amount to a serious breach of a number of international and regional standards relating to the free and independent exercise of the legal profession.

According to international standards, States must put in place all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. In particular, States must ensure that lawyers are not subject to, or threatened with, prosecution or any administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. International and regional standards also expressly prohibit the identification of lawyers with their clients or their clients' causes in the discharge of their professional duties.

Lawyers are, like other citizens, entitled to freedom of expression. International standards provide that lawyers "shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights without suffering professional restrictions"

(see annex). The imposition of restrictions to lawyers' freedom of expression, and the possibility that these restrictions may translate into criminal accusations, is incompatible with human rights standards.

Finally, we are concerned about the disbarment proceedings currently underway concerning Mr. Nampa at the LCT. Without the protection provided by an independent bar association, lawyers are extremely vulnerable to attack and to restrictions on their independence, especially from State authorities. In places where bar associations are controlled by the State, lawyers often become the target of attacks from the very organizations that should be protecting them. Such attacks most often take the form of groundless or arbitrary suspension to practice or disbarment, and are frequently accompanied by further restrictions, including arbitrary detention and prosecution. Silencing and/or controlling bar associations not only poses great risks to the legal community, but also has an adverse impact on the rule of law and the ability of ordinary people to defend their 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 facts that led to the disbarment proceedings brought against Mr. Nampa and explain how their disbarment may be regarded as compatible with Thailand's obligations under the International Covenant on Civil and Political Rights.
3. Please provide detailed information on the composition and functioning of the LCT, explain its relationship to the Government of Thailand and explain to what extent they can be regarded as independent disciplinary bodies established by the legal profession.
4. Please provide detailed information on the legislative and other measures adopted by Thailand to ensure that lawyers able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (principle 16 (a) of the Basic Principles on the Role of Lawyers) and to prevent them from being subject to, or being threatened with, prosecution or administrative, economic or other sanctions as a result of their identification with their clients or their clients' causes as a result of discharging their functions (principle 18); and ensure that lawyers enjoy their rights to freedom of expression, belief, association and assembly (principle 23).
5. Please explain what measures have been taken to ensure that all human rights defenders in Thailand, in particular those freedom of opinion and

expression, can carry out their peaceful and legitimate activities without fear of judicial harassment, retaliation, or other restrictions.

We would appreciate receiving a response within 60 days. Past 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.

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's to clarify the issue/s in question.

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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

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 14, 19 and 21, inter alia, of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996.

Article 14 of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, it provides a set of procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to a lawyer. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. They should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34).

Regarding the right to freedom of peaceful assembly we would like to refer to 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 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 individual mentioned above is being targeted because of his 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.

We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

Finally, we would like to recall the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990).

Principle 16 requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18 provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. This principle must be read in conjunction with principle 16 (c), referred to above, which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.

Principle 23 provides that lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.