

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 4/2016

27 May 2016

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 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a series of orders, acts and announcements that allegedly interfere with the exercise of the rights to freedom of expression and freedom of association, as well as severely curtail activities of civil society organizations and human rights defenders in the country.**

According to the information received:

Since 22 May 2014, the National Council for Peace and Order (NCPO) has reportedly adopted at least 234 NCPO Orders, 123 NCPO announcements and a further 59 orders under Article 44 of the Interim Constitution.

Article 44 of the Interim Constitution provides for the Prime Minister, as Head of the NCPO, to issue any order deemed to be necessary for "the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption or suppression of any act which undermines public peace and order or national security, the Monarch, national economics or administration of State affairs." Any order adopted under Article 44 is deemed legal, constitutional and final in accordance with Article 47 of the Interim Constitution.

Three orders adopted in this way, namely Order 3/2015, Order 5/2013 and Order 13/2016, are particularly concerning with regard to the powers they confer to various security officers that allow for disproportionate restrictions on the exercise

of the rights to freedom of association and freedom of expression and opinion, as detailed below.

Concerning Order 3/2015

On 1 April 2015, the NCPO adopted Order 3/2015, which confers several powers on appointed “Peace Keeping Officers” and their assistants. The Order grants the Peace Keeping officers and their assistants, all of whom are appointed by the Prime Minister, wide ranging powers to “prevent and suppress” four types of offences: offences against the King; offences against the security of the state; offences against the law on firearms, ammunition, explosives, fireworks and artificial weapons; and violations of NCPO orders and announcement (Article 3). These includes provisions under sections 113 to 118 of the Penal Code; threats or acts of violence to overthrow the Government; plotting, conspiring to commit insurrection; instigating State security officers from doing their duties; expressing an opinion to bring about change to laws, unrest or to cause people to transgress laws.

On 16 April 2015, the application of Order 3/2015 has been extended by the Order 5/2015, rendering it applicable to “Peace and Order Maintenance Officers”.

Article 4 of the Order provides Peace Keeping Officers, without law enforcement experience, the power to take part in investigations, search, and arrest of persons, as well as to carry out “any other act as assigned by the NCPO”.

Article 5 grants Peace Keeping Officers the capacity to prohibit “the propagation of any item of news or the sale or distribution of any book or publication or material likely to cause public alarm or which contains false information likely to cause public misunderstanding to the detriment of national security or public order”.

Article 6 of the Order authorizes the deprivation of liberty of persons for up to seven days in unrecognized places of detention, without judicial oversight.

Article 12 bans political gatherings of five or more persons, which have not received prior authorization by the Head of the NCPO or an authorized representative.

Article 13 of the Order creates a specific regime for the actions taken under the order as it stipulates that such actions “are not subject to the laws on administrative procedures and the Law on the Establishment of the Administrative Court and the Administrative Procedures Code”.

Order 3/2015 has allegedly been used to intimidate, harass and silence human rights defenders, political opponents, and protestors in Thailand. Since May 2014,

214 individuals have allegedly been arrested for exercising their right to peaceful assembly under this order.

On 22 May 2015, 38 students and activists were arrested for peacefully demonstrating in Bangkok. An additional seven individuals were arrested and charged with violating Order 3/2015 in Kohn Kaen. They were released the next day. On 26 June 2015, security officers arrested 14 students who had been protesting on 22 May 2015.

On 27 May 2015, a military court ordered 14 students to be held in custody at the Bangkok Remand Prison for 12 days. The students were released on 8 July 2015, and charged with sedition offences and violations of Order 3/2015. The legal representative of the students was intimidated and harassed in an attempt to prevent the students from receiving legal advice.

Concerning Order 13/2016

On 29 March 2016, the NCPO adopted Order 13/2016, which gives similar powers as those under Order 3/2015 and 5/2015 to “Prevention and Suppression Officers” and their assistants.

Clause 1 of the Order provides for the appointment of “Prevention and Suppression Officers” and their assistants by the Head of the NCPO or his authorized representative. The Order grants them wide-ranging powers to “prevent and suppress” 27 categories of crimes listed in the Annex, including crimes respectively under Title V and Title XI. This includes membership of secret or criminal associations and the funding of them, and assemblies of over 10 persons that threaten to breach the peace.

Clause 3 of the Order provides military officials without law enforcement experience or protocol to summon, search, and arrest persons, as well as to perform “any other duties assigned by the NCPO”.

Clause 4 of the Order authorizes the deprivation of liberty of persons for up to seven days in unrecognized places of detention, without judicial oversight.

Concerning announcements 37/2014, 38/2014, and 50/2014

NCPO announcements 37/2014, 38/2014, and 50/2014 expanded the jurisdiction of the military court over civilians to include, inter alia, criminal proceedings related to Article 116 of the Criminal Code. Article 116 criminalizes actions that aim to change the Government; create unrest amongst people; or cause people to transgress the law. It carries a maximum penalty of seven years’ imprisonment.

Since May 2014, there has been an increase in the use of Article 116 to charge politicians, human rights defenders and students for peacefully gathering to

express dissenting opinions that are critical of the Government. During this period, it is reported that at least 26 people have been arrested, 15 people have been charged and 35 people are serving sentences for violations of Article 116.

In addition, since 2014, there has been a reported increase in the number of lèse-majesté cases, with at least 76 individuals tried by military tribunals and ordinary civilian criminal courts. Additionally, it is reported that the length of prison sentences imposed in certain cases have recently lengthened. On 7 August 2015, for example, a separate military court in Bangkok and Chiang Mai sentenced two persons to 30 and 28 years' imprisonment, respectively, following guilty pleas, for several Facebook posts deemed critical of the monarchy.

Concerning the Act on Public Assembly

On 9 July 2015, the National Legislative Assembly enacted the Act on Public Assembly, which came into effect on 12 August 2015. The Act places limitations on the exercise of the right to peaceful assembly by imposing strict rules on locations allowed for public assembly. Moreover, the term “organizer” is defined widely to include those who invite or make an appointment for others to participate in public assembly; and Article 15 imposes duties on the organizer to be responsible for, among other things, ensuring that the public assembly is peaceful and free of weapons. Violations of the Act involve criminal sanctions with a maximum sentence of ten years' imprisonment.

We express grave concern that the above-mentioned orders, announcements and legislation severely curtail the rights to freedom of opinion, freedom of peaceful assembly and freedom of association in Thailand in ways that are incompatible with Thailand's obligations under international human rights law. In particular, the provisions of the Orders, announcements and legislation contain insufficient procedures, lack of adequate judicial oversight, and overly broad definitions that grant powers to security officers to unduly interfere with the rights to freedom of opinion and expression, freedom of peaceful assembly and freedom of association.

We express concern that the continued restrictions on rights and fundamental guarantees, including on the right to freedom of expression, particularly affect the rights and activities of political opponents, civil society and human rights defenders in Thailand following the military coup of 22 May 2014. In particular, we reiterate our concern, also expressed in our communication to your Excellency's Government on 16 February 2016, that the provisions relating to defamation and lèse-majesté are being used to stifle the exercise of the rights and curtail legitimate human rights activities.

We also express concern for the broader implications of the Orders, announcement, legislation and their enforcement, which cumulatively severely restrict civil society space in Thailand and have a deterrent effect on the exercise of rights, in particular by students, human rights defenders and individuals expressing dissenting opinions or exercising their rights to freedom of peaceful assembly and of association.

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.

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 comment you may have on the above-mentioned concerns.
2. Please provide information about the justification for Order 3/2015, 5/2015 and 13/2016, and how these Orders comply with Thailand's obligations under international human rights law.
3. Please provide information about the enforcement of the aforementioned laws, Orders and announcements on the exercise of the rights to freedom of peaceful assembly and association, and freedom of expression, and explain how this complies with international human rights law.

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.

Michel Forst
Special Rapporteur on the situation of human rights defenders

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

Annex
Reference to international human rights law

In connection with the alleged facts and concerns highlighted in this letter, we would like to remind your Excellency's Government of the rights to freedom of opinion and expression, freedom of peaceful assembly and freedom of association, as enshrined in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Thailand on 29 October 1996. We would like to reiterate that any restriction on the right to freedom of expression under article 19 of the ICCPR must be provided for by law; may only be imposed for legitimate grounds, and must conform to the strict tests of necessity and proportionality.

In this regard, we emphasize the inconformity of the orders, announcements and legislation with the provisions of Article 19, 21 and 22 of the ICCPR as these do not meet the strict tests of necessity and proportionality. In particular, we would like to express concern at the enforcement of these orders, announcements and legislation for acts that seem to constitute a legitimate exercise of people's rights.

We would like to draw the attention of your Excellency's Government to article 4 of the ICCPR, which sets out strict conditions for when a State may derogate from certain of its obligations under the Covenant. Such derogations must be of an exception and temporary nature, and be strictly required by the exigencies of the situation.

We also wish 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. Furthermore, articles 5, 6 and 8 provide for right to meet or assemble peacefully; the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; as well as the right to effective and non-discriminatory access to participation in public affairs.

We would also like to refer your Excellency's Government to Human Rights Council resolution 24/5, in which the Council "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online and offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to

freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We would also like to refer to the joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66). This report presents the applicable international human rights law and standards in the context of peaceful assemblies, and related good practices, notably in relation to permissible restrictions to the exercise of the right of freedom of peaceful assembly and the strict conditions triggering the responsibility of organizers.

Finally, we refer to Human Rights Council resolution 22/6, which urges States to ensure that legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law and that it is not used to impede or restrict the exercise of any human right. It also indicates that domestic law should create a safe and enabling environment for the work of human rights defenders.