

Mandates of the Working Group on Arbitrary Detention; 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: UA THA 5/2016:

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; 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 24/7, 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 the criminal prosecution against 13 activists for campaigning to vote against the upcoming constitutional referendum in Thailand: **Mr. Rangsiman Rome, Mr. Korakoch Saengyenpan, Mr. Anan Loket, Mr. Thirayut Napnaram, Mr. Rackchart Wong-arthichart, Mr. Yuttana Dasri, Mr. Worawut Butmat, Mr. Somsakol Thongsuksai, Mr. Nantapong Panmat, Ms. Tueannjai Waengkham, Ms. Pimai Ratwongsa, Ms. Konchanok Tanakhun, and Ms. Phanthip Saengathit.** In addition, criminal prosecution against a journalist from Prachatai journal covering the campaign, **Mr. Taweesak Kerdpoka,** and the questioning of the journal's editor-in-chief, **Ms. Chiranuch Premchaiporn.**

According to the information received:

The National Council for Peace and Order (NCPO) and the Thai military government have scheduled 7 August 2016 for a constitutional referendum. In late June 2015, a group of student activists and other activists, known as the New Democracy Movement (NDM), started a campaign to encourage voters to reject the draft Constitution on the grounds that the draft lacks important democratic guarantees, such as an appointed Senate, a weak protection of civil rights and a tightening of military control over the main branches of the state.

On 23 June 2016, at around 5.30 p.m., 13 activists from NDM, namely Mr. Rangsiman Rome, Mr. Korakoch Saengyenpan, Mr. Anan Loket, Mr. Thirayut Napnaram, Mr. Rackchart Wong-arthichart, Mr. Yuttana Dasri, Mr. Worawut Butmat, Mr. Somsakol Thongsuksai, Mr. Nantapong Panmat, Ms. Tueannjai Waengkham, Ms. Pimai Ratwongsa, Ms. Konchanok Tanakhun, and Ms. Phanthip Saengathit, were arrested by military personnel at the market of Kan Keha Bang

Phli community in Samut Prakan province, while they were distributing leaflets that urged voters to reject the draft constitution in the upcoming referendum. They were taken to the Bang Sao Thong police station and their campaign material was confiscated. All were held in police custody overnight and charged with violating the Head of the NCPO Order no.3/2558, which bans gatherings of five or more people, and Article 61 of the 2016 Constitutional Referendum Act, which bans the dissemination of “false information” about the draft constitution with the aim of influencing voters. If found guilty, they could face up to 10 years’ imprisonment, a fine of up to 200,000 Baht (approximately USD 5,700) and have their right to vote revoked up to 10 years.

On 24 June 2016, the 13 activists were brought before the Bangkok Military Court for a pre-trial remand hearing, which was approved by the court. Six of the activists were released on bail of 50,000 Baht (approximately USD 1,400) with conditions imposed by the military court. The conditions were to “not get involved with any act aimed to instigate, disrupt public order, persuade, compel people to rise up by any means possible in order to make possible any public assembly which may bring about public disorder or cause any harm or infringement on peace, order or the moral high ground of the people or any act which may induce people to commit a legal offence”.

The other seven activists refused the conditions attached to the release and remained in custody at the Bangkok Remand Prison. On the afternoon of 5 July 2016, the Bangkok Military Court rejected a police request to extend the detention of the seven activists for another 12 days. On 6 July 2016, the Department of Corrections released six of the remaining seven activists.

One of the activists, Mr. Korakoch Saengyenpan was not released and was transported to Thonburi police station because of previous charges in a different case. He was eventually released the same day, on bail set at 10,000 Baht (approximately USD 280).

It has been reported that the majority of the detainees lost weight during the span of their custody. Mr. Rangsiman Rome is reported to have lost at least 10 kg during the 12-day detention.

On 10 July officers from the Ban Pong police station arrested Prachatai journalist, Mr. Taweesak Kerdpoka for alleged violation of article 61 of the Constitutional Referendum Act. He was accompanying a group of activists to report on their activity.

On 11 July 2016, the Rachaburi Provincial Court granted police permission to detain Mr. Taweesak. He was released on the afternoon of the same day, after bail was set at 140,000 Baht (approximately USD 4000).

On 12 July 2016, five plainclothes police officers and several soldiers entered the premises of the Prachatai journal in Bangkok with a search warrant. They thoroughly searched the personal desk of Mr. Taweesak as well as the desks and individual lockers of other journalists. They also questioned Prachatai's editor-in-chief, Ms. Chiranuch Premchaiporn about the journal's involvement in printing anti-draft constitution documents and other material produced by the NDM. Ms. Chiranuch denied any involvement of Prachatai in the printing of such material.

We express concern at the arrest and charges brought against the above-named individuals and the criminalization of their speech on an issue of high public and political interest, where opinions should be freely expressed and debated by individuals as well as by the media. We express concern that these arrests are the latest in the alarmingly high number of arrests under the Referendum Act. We reiterate our concern that the Referendum Act's limitations to the right to freedom of expression are not compatible with article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Thailand on 29 October 1996.

Without expressing at this stage an opinion on whether the detention of the above-mentioned persons was arbitrary or not, we are concerned that, although they have been released on bail, they still face serious charges. In this regard, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the ICCPR.

We appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in articles 19 of the ICCPR, as well as to secure the right of peaceful assembly and of association, as stipulated in Articles 21 and 22 of the ICCPR.

We moreover wish to reiterate the principle enunciated by Human Rights Council resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3) of the ICCPR, including on (ii) the free flow of information and ideas, and on (iii) access to or use of information and communication technologies, including radio, television and the Internet. We would also like to draw the attention of your Excellency's Government to the principle enunciated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, which states that everyone has the right to obtain information from public authorities, and that in all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration.

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, 6 and 8

We further wish to 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 (OP 4).

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 information about how the arrest and charges brought against the above-named persons are compatible with international human rights standards, in particular with articles 19, 21, 22 and 25 of the ICCPR.
2. Please provide information about the legal basis for bringing the charges against the above-named persons before a military tribunal, and explain how this is compatible with international human rights standards.
3. Please provide information about the detention conditions of the above-named persons, and on measures taken to ensure the physical and mental integrity.
4. Please provide information on the legal basis for the search warrant allowing the search of Prachatai premises.
5. Please provide information about measures taken to ensure that the Referendum Act is brought into line with international human rights standards, and measures taken to ensure and encourage a free debate and free media engaging with the constitutional draft ahead of the referendum, including of those expressing dissenting views.

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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

It is our intention to publicly express our concerns through a press release as, in our view, the information upon which the press release is based indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

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.

José Antonio Guevara Bermúdez
Vice Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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