

Lawyers' Rights Watch Canada

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Thailand: Cease continued judicial harassment of human rights lawyer Ms. Sirikan “June” Charoensiri

LRWC calls on Thailand authorities to uphold the UN Basic Principles on the Role of Lawyers and the UN Declaration on Human Rights Defenders, and develop and implement a national law based on the recently produced Model Law for the Recognition and Protection of Human Rights Defenders.

**Statement
28 October 2016**

Lawyers’ Rights Watch Canada (LRWC) is a committee of Canadian lawyers and other human rights defenders who promote human rights and the rule of law through advocacy, education and research. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

Introduction

LRWC is deeply concerned by illegitimate charges against Ms. Sirikan (“June”) Charoensiri, a lawyer from Thai Lawyers for Human Rights (TLHR). The charges stem from her work as a lawyer representing 14 student members of the student New Democracy Movement (NDM), arrested 26 June 2015 and charged with sedition by a military court for exercising their internationally protected rights to freedoms of association, expression and assembly.

This statement discusses the emblematic and troubling case of lawyer Ms. Sirikan, who has been targeted by Thai authorities and faces military court proceedings as a result of her provision of legal representation for 14 student activists who were involved in a peaceful protest against the Thai government in June 2015.

LRWC calls upon authorities in Thailand to halt all forms of harassment and retaliation against Ms. Sirikan, withdraw all charges against her and adhere to Thailand’s international human rights obligations arising from the *International Covenant on Civil and Political Rights* (ICCPR),¹ the *UN Basic Principles on the Role of Lawyers*² (Basic Principles), the UN

¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

*Declaration on Human Rights Defenders*³ and other instruments. LRWC recommends that Thailand immediately begin development and implementation of a national law based on the Model Law for the Recognition and Protection of Human Rights Defenders,⁴ which provides authoritative guidance to States on how to implement the *Declaration on Human Rights Defenders*.⁵ In addition, LRWC calls for the immediate end to the use of military courts to prosecute civilians charged with offences allegedly committed between the May 2014 military coup in Thailand and 12 September 2016.

Background Facts and Timeline⁶

On 23 October, 2016, Ms. Sirikan responded to a summons to report to the Bangkok's Samranrat Municipality Police Station where she was charged as an accomplice to the offence of "making an appearance to public by words, writings or any other means which is not an act within the purpose of the Constitution" under Section 116 of the *Thailand Penal Code* (Penal Code), a sedition-like offence, and for participating in a meeting or political gathering of five or more persons, in contravention of the Order of the Head of the National Council for Peace and Order (NCPO) No. 3/2015, Section 12 (NCPO Order 3/2015). Due to the fact that the above incidents pre-date the Head of the NCPO Order No. 55/2016 (NCPO Order 55/2016), effective 12 September 2016 (which ends the use of military courts to prosecute civilians charged with offences after that date), Ms. Sirikan faces prosecution in a military court.

On 24-25 June 2015, Ms. Sirikan and other TLHR lawyers and documentation officers were present to observe and monitor the activity of the 14 NDM students in Bangkok. Ms. Sirikan was subsequently charged with two offences under the Penal Code: "giving false information regarding a criminal offence" (s.172) and "refusing to comply with the order of an official"

² *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, 7 September 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>. The UN General Assembly welcomed the *Basic Principles* in its resolution on "Human rights in the administration of justice," adopted by consensus (without a vote) 18 December 1990.

³ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>. The Declaration, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding, including the ICCPR. The Declaration was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation.

⁴ Model Law for the Recognition and Protection of Human Rights Defenders, available at: https://www.ishr.ch/sites/default/files/documents/model_law_full_digital_updated_15june2016.pdf.

⁵ ISHR, "Groundbreaking Model Law to recognise and protect human rights defenders," 21 June 2016, <http://www.ishr.ch/news/groundbreaking-model-law-recognise-and-protect-human-rights-defenders>.

⁶ For background facts and a timeline on this case, see Thailand: Judicial harassment of human rights defenders and democracy activists; harassment of human rights lawyers and advocates: Fourteen students charged with sedition after symbolic anti-coup demonstrations, LRWC, 8 July 2015, <http://www.lrwc.org/thailand-judicial-harassment-of-human-rights-defenders-and-democracy-activists-harassment-of-human-rights-lawyers-and-advocates-statement/>. See also Thailand: Cease judicial harassment of human rights lawyer Ms. Sirikan "June" Charoensiri, LRWC, 7 February 2016, <http://www.lrwc.org/ws/wp-content/uploads/2016/02/Statement-Sirikan-and-Dao-Din-activists-7-February-2016.pdf>.

(s.368) in relation to her provision of legal aid to the student activists. These charges against Ms. Sirikan appear to be based on her refusal to agree to a warrantless search of her car in the course of representing her clients. When, over the objections of Ms. Sirikan, police conducted a warrantless search and impoundment of her car, Ms. Sirikan filed a complaint of police misconduct; police responded to the complaint by charging her with making a false report to the police. In relation to these charges, Ms. Sirikan reported to the Prosecutor's Office on 29 September 2016, but due to the police request to submit the case file with additional witness testimonies to the Prosecutor's Office on 30 September 2016, her hearing was rescheduled. The hearing to confirm these charges is now set for 3 November 2016 at the Office of Prosecutor of Dusit District in Bangkok, marking the third postponement of this case.⁷ If convicted of violating Penal Code section 172, she faces imprisonment of up to two years and/or a fine of up to four thousand Baht. If convicted of violating Penal Code section 368, she faces imprisonment of up to one month and/or a fine of up to one thousand Baht.

The additional charges laid on 23 October 2016, alleging sedition and contravention of NCPO Order 3/2015, also relate to Ms. Sirikan's representation of NDM students in relation to the June 2015 peaceful assembly. As a result of the new charges, Ms. Sirikan now faces proceedings in a military court, since the alleged offences occurred in 2015, prior to the Order of the Head of the NCPO 55/2016 on 12 September 2016 which discontinues the practice of prosecuting civilians in military courts for crimes committed after that date. NCPO Order 55/2016 does not apply to pending cases against civilians or charges allegedly committed before 12 September 2016. If found guilty of violating Penal Code section 116, she faces punishment of imprisonment of up to seven years. If convicted of violating NCPO Order 3/2015, she faces imprisonment of six months or a fine of up to ten thousand Baht.

Violations of International Human Rights Law binding on Thailand

Harassment and Intimidation of Human Rights Defenders

The restrictions arbitrarily imposed by the NCPO on the internationally protected rights to expression, assembly and association, in particular the interference with the 14 NDM students' freedoms of association, assembly and expression, the charges against them, and the charges against Ms. Sirikan for her representation of the students, violate Thailand's international human rights obligations under the ICCPR, which Thailand ratified in 1996.⁸

These charges against Ms. Sirikan contradict commitments to protect human rights defenders made by Thailand at its May 2016 Universal Periodic Review (UPR) by the UN Human Rights Council. Thailand formally accepted recommendations from Member States to stop all forms of harassment and intimidation of human rights defenders, to ensure the rights of human rights defenders are properly respected, and to protect human rights defenders in accordance with the *Declaration on Human Rights Defenders*. LRWC welcomes information provided by Thailand at its UPR in May 2016 that the Ministry of Justice Rights and Liberties Protection Department has

⁷ Thai Lawyers for Human Rights, "Lawyer Sirikan 'June' summoned for 'sedition' charge in another lawsuit," 28 September 2016, <http://www.tlhr2014.com/th/?p=2269>.

⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

established a working group committed to develop measures to protect human rights defenders whose human rights are at risk of being violated.⁹ To assist Thailand to achieve its UPR commitments to protect human rights defenders, LRWC recommends that Thailand adopt the recently developed Model Law for the Recognition and Protection of Human Rights Defenders¹⁰ which provide authoritative guidance to the Ministry on how to develop a national law to implement and give full force and effect to the relevant provisions in the *Declaration of Human Rights Defenders*.

The *Declaration on Human Rights Defenders* adopted by consensus by the General Assembly of the UN on December 9, 1998, Article 12.2, requires all States to:

take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

The Basic Principles require Thailand and other states to ensure that lawyers are free to represent clients. Principles 16 and 18 specify that:

Governments shall ensure that lawyers

- (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
- (b) are able to travel and to consult with their clients freely both within their own country and abroad; and
- (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

...

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.”¹¹

⁹ Mr. Charnchao Chaiyanukij, Permanent Secretary of Ministry of Justice of Thailand (Final remarks: Comments of the Ministry of Justice), Universal Periodic Review, Thailand, 11 May 2016, Available at <http://webtv.un.org/meetings-events/human-rights-council/universal-periodic-review/watch/thailand-25th-session-of-universal-periodic-review/4888484783001> (Chapter 103).

¹⁰ Model Law for the Recognition and Protection of Human Rights Defenders, available at: https://www.ishr.ch/sites/default/files/documents/model_law_full_digital_updated_15june2016.pdf. The Model Law was developed by the International Service for Human Rights over a three-year period, after consultations with over 500 human rights defenders from more than 110 States from all regions, and endorsed by 27 high-level experts. The Model Law provides legislators and policy makers with a source of technical assistance to inform the development of a national law for the recognition and protection of human rights defenders.

¹¹ *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, 7 September 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>. The UN General Assembly welcomed the *Basic Principles* in its resolution on “Human rights in the administration of justice,” adopted by consensus (without a vote) 18 December 1990.

Use of Military Courts to Prosecute Human Rights Defenders

Since the May 2014¹² military coup in Thailand, at least 1,811 civilians have faced proceedings in military courts.¹³ Thailand's military court system fails to provide fair trial rights guaranteed by Article 14 of the ICCPR,¹⁴ which guarantees to everyone the right to a "fair and public hearing by a competent, independent and impartial tribunal established by law." Thailand's military courts do not constitute such a tribunal and are therefore not competent to determine the rights of or criminal charges against civilians.

As set out in LRWC's 25 May 2015 Statement,¹⁵ military courts lack competence, independence and impartiality, civilians do not have the same rights as soldiers in military courts, there is no appeal to civil courts, and no appeal at all for civilians tried in military court between 20 May 2014 and 1 April 2015. Military courts may operate in a secret fashion, the presumption of innocence is compromised, sentences are considerably harsher than civilian courts, and amendments to the *Military Courts Act 1955* provide for arbitrary detention by military courts.

NCPO Order 55/2016, dated 12 September 2016 and issued under Article 44 of the Interim Constitution, phases out the widely criticized practice of prosecuting civilians before military courts for four categories of offences: offences against internal security; violation of NCPO orders; possession and use of war weapons; and *lese majeste* offences. However, NCPO Order 55/2016 applies only to charges in relation to actions allegedly committed after 12 September 2016. While LRWC welcomes NCPO Order 55/2016 of 12 September 2016 ending the prosecution of civilians in military courts for crimes committed after that date, approximately 500 civilian cases remain in military courts.¹⁶

The UN Human Rights Committee (HR Committee) has concluded that "the jurisdiction of military tribunals is restricted to offences of a strictly military nature committed by military personnel."¹⁷ In 1984, the HR Committee affirmed in its General Comment 13 that military tribunals are prohibited from trying civilians except in extraordinary, objectively determined and

¹² Announcement of the NCPO No. 37/2557 [2014]: Offences Under the Power of the Military Court to Examine and Decide, 25 May 2014, <http://www.thaigov.go.th/en/announcement-2/item/83706-id83706.htm>; International Commission of Jurists (ICJ), Submission to the UN Committee on Economic, Social and Cultural Rights, 11 May 2015, available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2015/05/Thailand-ICJ-CESCR-submission-Advocacy-non-legal-submission-2015-ENG.pdf>.

¹³ ICJ, "Thailand: statement to UN on situation for human rights," 23 September 2016, <http://www.icj.org/thailand-statement-to-un-on-situation-for-human-rights/>. This is based on information from the Judge Advocate General's Department (JAG) provided to Thai Lawyers For Human Rights (TLHR) in July 2016 and covering the period 22 May 2014 to 31 May 2016.

¹⁴ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

¹⁵ LRWC, Thailand: Trials of civilians in military courts violate international fair trial rights: Judicial harassment of lawyers and human rights defenders, Statement, 25 May 2015, available at: <http://www.lrwc.org/thailand-trials-of-civilians-in-military-courts-violate-international-fair-trial-rights-statement/>.

¹⁶ ICJ, "Thailand: statement to UN on situation for human rights," 23 September 2016, <http://www.icj.org/thailand-statement-to-un-on-situation-for-human-rights/>.

¹⁷ Cited in Draft Principles Governing the Administration of Justice Through Military Tribunals, U.N. Doc. E/CN.4/2006/58 at 4 (2006), Report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux to the UN Commission on Human Rights in 2006 (*Decaux Principles*); available at: <http://www1.umn.edu/humanrts/instree/DecauxPrinciples.html>.

narrowly defined circumstances such as cases where fair, independent and impartial civilian courts are unavailable.¹⁸ The HR Committee commented that, in such extraordinary cases, whenever a State tries a civilian before a military or another special tribunal, it must offer all due process standards required by Article 14 of the ICCPR. States are also required to provide objective reasons for trying civilians in a military court and why ordinary courts cannot be used.¹⁹ NCPO has not provided any reasons why civilian courts are not available to try civilians and relies solely on the existence of martial law proclaimed under the *Martial Law Act, 1914*.

Principle 5 of the *Basic Principles on the Independence of the Judiciary*, endorsed by the UN General Assembly in 1985²⁰ affirms that:

everyone has the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

In 2006, Emmanuel Decaux, the UN Special Rapporteur of the UN Sub-Commission on the Promotion and Protection of Human Rights, prepared *Draft Basic Principles Governing the Administration of Justice through Military Tribunals* (Decaux Principles).²¹ The Decaux Principles were created in consultation with human rights experts, jurists and military personnel from around the world and are based on the foundational principle that military justice should be an integral part of the normal judicial system and should operate in a way that guarantees full compliance with internationally protected human rights.

In 2006, the UN Commission on Human Rights reviewed and affirmed the Decaux Principles, which state:

Military courts should, in principle, have no jurisdiction to try civilians. The State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts²² and that no tribunals may be created that “displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”²³

The Decaux Principles further state that even when trying military personnel, military tribunals must always be conducted “within the framework of the general principles of the administration

¹⁸ UN Human Rights Committee (HRC), CCPR General Comment No. 13: Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, 13 April 1984, paragraph 4 [CCPR General Comment No. 13], available at: <http://www.refworld.org/docid/453883f90.html> [accessed 16 December 2014].

¹⁹ *Ibid.*

²⁰ *Basic Principles on the Independence of the Judiciary*, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

²¹ *Decaux Principles*, *supra* note 17.

²² *Decaux Principles*, principle 5, para 20, *supra* note 17.

²³ *Ibid.*

of justice” and apply fair trial standards in accordance with international human rights law and international humanitarian law.²⁴ In October 2013, the UN Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, called for the adoption of the Decaux Principles by the Human Rights Council (the successor body to the UN Commission on Human Rights) and endorsement by the General Assembly.²⁵

Recommendations

LRWC calls on Thailand authorities to:

1. Immediately and unconditionally withdraw all charges and stop all prosecutions against Ms. Sirikan, and ensure no further retaliation against, intimidation of, or interference with Ms. Sirikan or other lawyers carrying out their duty to vigorously represent clients;
2. Guarantee in all circumstances that all lawyers and other human rights defenders in Thailand are able to carry out their legitimate human rights activities without fear of reprisals and free from retaliation, intimidation and judicial harassment;
3. Ensure the implementations of the above noted recommendations Thailand accepted during the recent UPR with regard to human rights defenders;
4. Comply with all requirements of the *Declaration on Human Rights Defenders*, including:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.

Article 12.2

The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

5. Immediately begin developing and implementing a national law based on the Model Law for the Recognition and Protection of Human Rights Defenders, which provides authoritative guidance to States on how to implement the *Declaration on Human Rights Defenders*;
6. Ensure that all authorities in Thailand refrain from “threats, intimidation and interference [with lawyers] in the discharge of their professional functions,” and ensure adherence to the

²⁴*Ibid.*

²⁵ Gabriela Knaul, quoted in “Military tribunals need stronger regulation, says UN expert on the independence of the judiciary,” UN News Centre 28 October 2013, available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13911&>

State duty “to uphold the integrity of ... lawyers and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice...”²⁶ in accordance with the Basic Principles which mandate that

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
[...]
 18. Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions;
7. Immediately transfer all pending military court trials of civilians to civilian courts, set aside the convictions of all civilians prosecuted in military courts since the 2014 coup, and ensure access to civilian courts by all civilians, in accordance with the requirements of the ICCPR;
 8. Put an immediate end to the restrictions arbitrarily imposed by the NCPO on the internationally protected rights to freedoms of expression, association and assembly, including withdrawal of Article 44 of the Interim Constitution;
 9. Ensure compliance with the ICCPR including guarantees of freedoms of expression, association and assembly;
 10. Repeal or amend all laws and revoke all NCPO orders and announcements that are contrary to Thailand’s international law obligations and to the rule of law and Thailand’s obligation under the *Charter of the United Nations* to respect human rights, and restore democratic rule through free and fair elections.

²⁶ UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers A/HRC/29/L.1, 30 June 2015, http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_29_L11.docx.