

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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THAILAND: Cease judicial harassment of human rights lawyer, Ms. Sirikan (“June”) Charoensiri

LRWC calls on authorities to uphold UN Basic Principles on the Role of Lawyers and the UN Declaration on Human Rights Defenders

Statement

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Lawyers’ Rights Watch Canada (LRWC) is a committee of Canadian lawyers 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).

LRWC is deeply concerned by illegitimate charges against Ms. Sirikan (“June”) Charoensiri, a lawyer from Thai Lawyers for Human Rights (TLHR). She is one of the legal representatives of 14 student members of the student New Democracy Movement (NDM) who may face prison terms up to seven years after being arrested on 26 June 2015 and charged with sedition by a military court for exercising their right to dissent and for participating in peaceful, symbolic, protests against the 2014 military coup. On 2 February 2016, Ms. Sirikan received a summons to report to the Chanasongkram Police Station on 9 February 2016 at 10:00 am on two charges under Thailand’s *Penal Code*: filing a false police report (s. 172) and refusing to comply with an order of competent official (s. 368).¹ Police Colonel Suriya Chamnongchok has accused Ms. Sirikan of filing false charges of misconduct against police for improperly searching her car, and refusing a police order to allow the search of her car.

The 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, and filing a complaint about police misconduct after they sought to conduct a search without warrant or permission and illegally impounded her car. Ms. Sirikan’s clients are themselves facing illegitimate charges before a Military Court based on the peaceful exercise of their rights to freedoms of expression and assembly.

LRWC calls upon authorities in Thailand to halt all forms of harassment against Ms. Sirikan, withdraw all charges against her and adhere to Thailand’s international human rights obligations

¹ *Penal Code*, B.E. 2499, available at <http://www.thailandlawonline.com/table-of-contents/thailand-criminal-law-translation>

under the *International Covenant on Civil and Political Rights* (ICCPR),² the UN *Basic Principles on the Role of Lawyers*³ and the UN *Declaration on Human Rights Defenders*.⁴

Facts and background⁵

Ms Sirikan was present during the 26 June 2015 arrest of the 14 students and followed them to the Phra Ratchawang Police Station and then to the Bangkok Military Court for a proceeding which was held from 26 June at 10:00 pm to 27 June at 12:30 am. The Military Court ordered the students imprisoned on remand for 12 days. The students left their belongings with Ms. Sirikan when they were sent to prison, and Ms Sirikan put the belongings into her car parked in front of the Military Court building. After leaving the Military Court, police officers led by Pol. Lt. Gen. Chayapol Chatchaiyadetch, asked to search Miss Sirikan's car, stating they was looking for the 14 students' mobile phones. Relying on legal protection of lawyer-client confidentiality and the lack of a search warrant, Ms. Sirikan refused to consent to a search of the vehicle. The police impounded Ms. Sirikan's car overnight. At 12:45 pm on 27 June, Ms Sirikan filed a complaint of police misconduct at the Chanasongkram Police Station against Pol. Lt. Gen. Chayapol and other police officers for illegally impounding her car. The police refused to accept the complaint. Other police arrived at 3:30 pm with a court warrant and searched her car, seizing as evidence five mobile phones belonging to her clients.⁶ The warrant was reportedly obtained by police without advising the court that the vehicle belonged to a lawyer of the alleged offenders.⁷ At 6:00 pm. Ms. Sirikan again attempted to file a complaint for alleged police misconduct. A senior police officer reportedly advised Ms. Sirikan that if she filed a complaint, police might take legal action against her.⁸ Police finally accepted her complaint at 11:00 pm. On 28 June 2015, a senior police officer advised media that they had found "important evidence" in Ms. Sirikan's car and

² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

³ *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.

⁴ 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.

⁵ 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/>

⁶ International Commission of Jurists, "Thailand: immediately end harassment and intimidation of human rights lawyer Sirikan Charoensiri," 2 July 2015 [ICJ, 2 July 2015], available at <http://www.icj.org/thailand-immediately-end-harassment-and-intimidation-of-human-rights-lawyer-sirikan-charoensiri/>

⁷ Thai Lawyers for Human Rights. An open letter An inquiry into the issuance of search warrant of attorney's vehicle urged (Attorney of the Thai Lawyers for Human Rights), available at <https://voicefromthais.wordpress.com/2015/06/29/open-letter-an-inquiry-into-the-issuance-of-search-warrant-of-attorneys-vehicle-urged/>

⁸ Probe into students' 'backers', *The Nation*, 29 June 2015, available at <http://www.nationmultimedia.com/politics/Probe-into-students-backers-30263315.html>

that criminal charges against her were being considered.⁹ On 29 June 2015, police visited Ms. Sirikan's family home, asked her parents to identify her in photos and questioned them about her background.¹⁰ On 8 July 2015, the 14 activists were released without conditions or bail after the full 12 days of the previous detention order expired. Charges against the 14 have not been withdrawn.

Recommendations

LRWC calls upon all authorities Thailand to:

- Immediately and unconditionally withdraw charges against Ms. Sirikan (“June”) Charoensiri;
- Ensure that police receive adequate training about the legal requirements for conducting searches;
- Ensure that citizens are able to file complaints against the police without reprisals or fear of reprisals;
- 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 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...”¹¹ in accordance with the UN *Basic Principles on the Role of Lawyers* 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;

- Put an immediate end to retaliation against or interference with, the work of human rights defenders and guarantee in all circumstances, that all human rights defenders in Thailand, including those advocating for freedoms of expression, association and assembly, are able to carry out their legitimate human rights activities without fear of reprisals and free from all restrictions, including judicial harassment in conformity with the provisions of the UN *Declaration on Human Rights Defenders*, which states that:

⁹ ICJ 2 July 2015 *supra* note 6.

¹⁰ *Ibid.*

¹¹ 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.

- “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 1);
 - “For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to meet or assemble peacefully” (Article 5(a));
 - “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” (Article 12.2);
- Respect and implement the General Assembly resolution A/RES/70/161, entitled “Human rights defenders in the context of 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,” adopted 17 December 2015.¹² Thailand voted in favour of this resolution which calls for accountability for violence against and intimidation of human rights defenders and urges States to release defenders who have been arbitrarily detained for exercising their fundamental rights to freedom of expression, peaceful assembly and association;
 - Immediately and unconditionally drop all charges against the 14 student activists and cease all judicial and other harassment against them;
 - Cease trying civilians in Military Courts, and ensure access to civilian courts by all civilians for determination of charges and the legality of detention and treatment, in accordance with the requirements of the ICCPR;¹³
 - Ensure that Thailand’s Constitution adheres to all international human rights obligations binding on Thailand, and restore democratic rule through free and fair elections.
 - Put an immediate end to the restrictions arbitrarily imposed by the NCPO on the internationally protected rights to peaceful and nonviolent expression and assembly, including withdrawal of Article 44 of the interim Constitution,
 - Ensure compliance with the ICCPR including protections of freedoms of expression, association and assembly;
 - Ensure that Thailand’s Constitution complies with all international human rights obligations binding on Thailand,
 - Restore democratic rule through free and fair elections.

¹² A/RES/70/161. See: <http://www.un.org/press/en/2015/ga11745.doc.htm>.

¹³ For details, see the recommendations at Thailand: Trials of civilians in military courts violate international fair trial rights: Judicial harassment of lawyers and human rights defenders (LRWC แถลงการณ์การไต่สวนคดีต่อพลเรือนในศาลทหาร ละเมิดสิทธิสากลว่าด้วยการพิจารณาคดีที่เป็นธรรม), 25 May 2015, available at <http://www.lrwc.org/?p=9095>.