

Lawyers' Rights Watch Canada

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

www.lrwc.org; lrwc@portal.ca; Tel: +1 604 738 0338; Fax: +1 604 736 1175

3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

28 May 2014

Gen. Prayuth Chan-Ocha
Director, National Council for Peace and Order
Commander-in-Chief, Royal Thai Army
Rachadamnoen Nok Road, Bang Khun Phrom, Phra Nakhon, 10200
Bangkok, Thailand

Dear General Prayuth,

RE: Arbitrary arrests and incommunicado detentions

Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers that advocates for lawyers and human rights defenders in danger and promotes enforcement of international human rights and the rule of law.

LRWC is alarmed and gravely concerned by the manifest and serious violations of Thailand's international law obligations by the National Council for Peace and Order (NCPO) and the Royal Thai Army, particularly the invocation of the *Martial Law Act* of 1914 on 20 May 2014, the suspension of Thailand's Constitution on 22 May 2014, and the takeover of the State for an indefinite period of time. LRWC urges the NCPO to ensure immediate implementation and enforcement all of Thailand's international law and international human rights obligations including the rights guaranteed by the *International Covenant on Civil and Political Rights* (ICCPR)¹ to which Thailand acceded on 29 Oct 1996. The ICCPR guarantees the non-derogable right to freedom from arbitrary detention, and the right to freedoms of expression, assembly and association, as well as the right of all citizens "to take part in the conduct of public affairs, directly or through freely chosen representatives."

Violation of right to freedoms of expression and assembly: The NCPO has shut down numerous television and radio stations and has instructed media and others that they are subject to prosecution if they criticise the military or the NCPO. Assemblies of more than five persons are prohibited.

Arbitrary detention: Of grave concern is the daily summoning by the NCPO of human rights defenders, academics, journalists, activists and their family members for questioning and detention, and their subsequent arbitrary detention in unknown locations of human rights defenders, academics and journalists, political activists and others speaking out against martial law and the military take-over. The *Martial Law Act* of 1914 provides for detention for up to seven days "for inquiry or other necessities of the military" (Section 15). The NCPO has announced that the penalty for not obeying the summons carries a prison term of up to two years plus a 40,000 baht fine; trials will be conducted by military courts.

¹ *International Covenant on Civil and Political Rights*, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Arrests and detentions are being carried out without access to legal representation or independent courts. People are being arrested and detained not on the basis of having committed any criminal offence, but on the basis of their political opinions or affiliations or for peacefully exercising their rights to freedom of expression, association or peaceful assembly.

No comprehensive list of detained persons is available, nor have the whereabouts of detainees been made known. Incommunicado detention in irregular facilities in secret locations without family visits and legal representation and outside the purview of judicial oversight puts detainees at risk of torture or ill-treatment and constitutes an egregious violation of international human rights.

On 28 May 2014, it was reported that all national TV stations were ordered to broadcast videos showing five prominent political figures detained by the NCPO in an apparent effort to demonstrate that people in army custody are well-treated. However, there is no independently verifiable information about conditions of detention or the wellbeing of other detainees. Before being released, detainees are reportedly required to agree that they will not violate NCPO orders, be involved in political activity or travel overseas without permission, and they must also insist they were not hurt while under detention. The NCPO has announced that persons defying its orders will face military trials.

We provide the following two illustrative examples:

- 1. Arbitrary arrest of Ms. Sukanya Prueksakasemsuk, human rights defender, and her son, Panitan Prueksakasemsuk, a law student:** On 25 May 2014, armed soldiers conducted a raid on Ms. Sukanya's home in Bangkok and, without warrant or notification of criminal charges, arrested Ms. Sukanya and Mr. Panitan and seized their laptop computers. For a number of hours after being taken away, the NCPO failed or refused to provide any information as to their whereabouts, raising alarm that they were victims of enforced disappearance. They were released after 5 hours at approximately 10 am local time. On 23 May 2014, Ms. Sukanya had organized a peaceful rally opposing the military's imposition of nationwide martial law. Ms. Sukanya is a well-known human rights defender who has campaigned for international human rights particularly regarding Thailand's *lese majeste* laws which in their present form fail to measure up to international human rights standards.² She is the wife of Mr. Somyot Prueksakasemsuk, a labour rights activist and magazine editor who is serving a 13-year sentence under Thailand's *lese majeste* laws. The United Nations (UN) Working Group on Arbitrary Detention has determined Mr. Somyot's detention to be arbitrary and internationally unlawful. The fear about the possibility of Ms. Sukanya's and Ms. Panitan's enforced disappearance was realistic given Thailand's record of impunity for enforced disappearance in dozens of cases over the past decade in which police or military personnel are implicated,³ including disappearances of human rights defenders and community activists.
- 2. Arbitrary detention of approximately 18 journalists, including Mr. Pravit Rojanaphruk, a**

²The UN Special Rapporteur on the right to freedom of opinion and expression, Frank La Rue, recommended in 2011 that the Government of Thailand amend its laws on *lèse majesté* to bring them into conformity with Thailand's international human rights obligations. See "Thailand / Freedom of expression: UN expert recommends amendment of *lèse majesté* laws," UN News Centre,

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11478&LangID=E>. In addition, several States recommended repeal or amendment of these laws to ensure they comply with international human rights standard of freedom of expression. See Universal Periodic Review – Thailand: Report of the Working Group, A/HRC/19/8, 8 December 2011, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/THSession12.aspx>

³ See the Human Rights Watch report on enforced disappearances, "It Was Like Suddenly My Son No Longer Existed". Human Rights Watch, 2007, <http://www.hrw.org/reports/2007/03/19/it-was-suddenly-my-son-no-longer-existed>.

senior journalist with *The Nation* newspaper: Mr. Pravit regularly reports and speaks about human rights matters and is well known for his criticism of Thailand's *lèse-majesté* laws. On 23 May, Mr. Pravit was summoned to report to the NCPO, and the next day he went to the headquarters of the National Council for Peace and Order (NCPO) accompanied by a lawyer and representatives of the UN Office of the High Commissioner for Human Rights. Mr. Pravit was questioned for five hours without the presence of his lawyer and was then taken to an irregular place of detention in an undisclosed location where as of 28 May 2014 he continues to be held incommunicado. His condition is unknown.

The NCPO reportedly acknowledged on 28 May 2014 that 253 persons have been summoned to report to the army but that most have now been released and 76 persons remain in detention. Hundreds of other persons are now at risk of arbitrary detention.

The declaration of martial law and the suspension of the Constitution and normal processes of due process violate Thailand's international human rights obligations including the *International Covenant on Civil and Political Rights* (ICCPR) to which Thailand acceded on 29 Oct 1996. The ICCPR guarantees the rights to liberty and freedom from arbitrary detention (Article 9) and freedoms of expression (Article 19), assembly (Article 20) and association (Article 22). The declaration of Thailand-wide martial law, the suspension of the Constitution and the take-over of government, legislative and judicial functions by the Royal Thai Army are disproportionate responses to the political tensions in Thailand and are in violation of Thailand's multilateral international treaty obligations. Arbitrary detention is never permissible under any circumstances.

ICCPR Article 9 states:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. ..
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

...

None of these rights are being observed by the NCPO. the ICCPR strictly limits the right of states to derogate from the rights to liberty and the freedoms of expression, assembly and association.

ICCPR Article 4.1 states:

In time of public emergency which *threatens the life of the nation* and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent *strictly required by the exigencies of the situation*, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin (emphasis added).

The UN Human Rights Committee (HR Committee) has stated that derogations during a state of emergency are to be “exceptional and temporary”⁴ and must only be invoked when the life of the nation is threatened and then only to the extent strictly necessary. Thailand’s political impasse, ongoing protests and sporadic violence during demonstrations in Bangkok do not justify the declaration of martial law throughout the whole of Thailand for an indefinite period of time, nor do these factors justify a military suspension of the Constitution and a takeover of all branches of government. Furthermore, the HR Committee affirms that States “may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of ... peremptory norms of international law, for instance ... through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.” The UN Working Group on Arbitrary Detention affirms that “The prohibition of arbitrary deprivation of liberty and the right of anyone deprived of his or her liberty to bring proceedings before a court in order to challenge the legality of the detention, known in some jurisdictions as habeas corpus, are non-derogable under both treaty law and customary international law.”⁵

We also draw your attention to the *International Convention for the Protection of All Persons from Enforced Disappearance*. Article 2 of that Convention defines enforced disappearance as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law” (emphasis added). Thailand signed this treaty on 9 January 2012 but has not yet ratified it. Even so, as a signatory State, Thailand is expected to respect its provisions by ensuring that in all cases the whereabouts and condition of each detainee is made known to their relatives and lawyers. We also remind the NCPO and the Royal Thai Army of the *Declaration to Protect all People from Enforced Disappearances*, A/RES/47/133, 18 1992 of the UN General Assembly which confirmed that States have a positive duty to prevent and punish enforced disappearance as part of their obligations under the ICCPR and the *Universal Declaration of Human Rights* to ensure rights to liberty and security, freedom from torture and equal protection of the law. The *Declaration* also confirms that: “No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.” Failure to act quickly and effectively to remedy arbitrary detention in secret locations may itself constitute a violation of the ICCPR.⁶

Immediate and effective action by the NCPO and the Royal Thai Army is required to:

- Provide a complete list of all detainees of the NCPO and the Royal Thai Army along with their locations.
- Provide all detainees with access to their family members, lawyers, civilian courts and any medical care they may need, ensuring the physical and psychological integrity of all detainees.

⁴ UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11, available at: <http://www.refworld.org/docid/453883fd1f.html>

⁵ Working Group on Arbitrary Detention: *Compilation of Deliberations*, Current as of 17 October 2013, available at <http://www.ohchr.org/Documents/Issues/Detention/CompilationWGADDeliberation.pdf>.

⁶ The UN Human Rights Committee stated “There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of *States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities*” (emphasis added). Human Rights Committee, *General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8.

- Provide immediate access to all places of detention to independent monitors so as to ensure compliance with international human rights standards and the UN *Basic Principles for the Treatment of Prisoners*.⁷
- Immediately and unconditionally release all those detained by the NCPO unless they are immediately charged with a recognizable criminal offence that was in existence at the time it was committed;
- Restore freedom of expression to journalists and media, and ensure that the public retains access to information freely through the internet;
- Restore freedom of association and assembly.

We look forward to your immediate response.

Yours sincerely,



Gail Davidson
Executive Director
Lawyers Rights Watch Canada

- cc. General Thanasak Patimaprakorn
Deputy Leader of the National Council for Peace and Order
Chief of the Armed Forces
Royal Thai Armed Forces Headquarters
127 Chaeng Watthana Road, Laksi, 10210
Bangkok, THAILAND
- cc. Admiral Narong Pipathanasai
Deputy Leader of the National Council for Peace and Order
Royal Thai Navy Commander-in-Chief,
Derm Palace, Wang Derm Road
Bangkok, THAILAND
- cc. Air Chief Marshal Prajin Jantong
Deputy Leader of the National Council for Peace and Order
Royal Thai Air Force Commander-in-Chief, Phahon Yothin Road
Don Mueang, 10210,
Bangkok, THAILAND
- cc. Police General Watcharapol Prasarnrajkit

⁷ Basic Principles for the Treatment of Prisoners, Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990,

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx>

Deputy Leader of the National Council for Peace and Order
Royal Thai Police Commissioner-General
Royal Thai Police
1 Building, Floor 7, Rama 1 Road, Pathumwan 10330
Bangkok, THAILAND Fax: +66 (0)-2205-3738

- cc. General Udomdet Sitabut
Secretary-General of the National Council for Peace and Order
Royal Thai Army Deputy Commander-in-Chief
Rachadamnoen Nok Road, Bang Khun Phrom, Phra Nakhon
Bangkok 10200, THAILAND
- cc. Colonel Winthai Suvaree
Spokesman of the National Council for Peace and Order,
Royal Thai Army Spokesman,
Rachadamnoen Nok Road, Bang Khun Phrom, Phra Nakhon
Bangkok 10200, THAILAND
- cc. National Human Rights Commission of Thailand
120 Chaengwattana Road,
Laksi District,
Bangkok 10210, THAILAND,
Email: interhr@nhrc.or.th info@nhrc.or.th ; help@nhrc.or.th
- cc. Attorney General, Office of the Attorney General,
Lukmuang Building, Nahuppei Road,
Prabaromrachawang, Pranakorn,
Bangkok 10200, THAILAND
Fax: +662 224 0162/1448/ 221 0858, Email: ag@ago.go.th; oag@ago.go.th
- cc. Commissioner General,
Royal Thai Police,
1st Building, 7th Floor, Rama I, Pathumwan
Bangkok 10330, THAILAND,
Fax: +662 251 5956 / 205 3738 / 255 1975-8; feedback@police.go.th
- cc. Permanent Mission of Thailand to the United Nations in Geneva,
rue Gustave Moynier 5, 1202
Geneva, Switzerland,
Fax: + 41 22 715 10 00 / 10 02; Email: mission.thailand@ties.itu.int
- cc. Embassy of Thailand in Brussels,
2 Sq. du Val de la Cambre, 1050 Ixelles,
Belgium, Tel: + 32 2 640.68.10; Fax: + 32 2 .648.30.66. Email: thaibxl@pophost.eunet.be
- cc. Royal Thai Embassy, Ottawa, Canada
180 Island Park Drive
Ottawa, Ontario K1Y 0A2
Fax : 613-722-6624, email contact@thaiembassy.ca
- cc Mr. Philip Calvert

Ambassador of Canada to Thailand
15th Floor, Abdulrahim Place
P.O. Box 2090
Bangkok 10501, Thailand Email: Phil.Calvert@international.gc.ca

cc. Mr. Jeremy Sarkin
Chairperson-Rapporteur, Working Group on Enforced or Involuntary Disappearances
c/o OHCHR-UNOG CH-1211
Geneva 10 Switzerland Fax: +41-22 917 9006 Email: wgeid@ohchr.org

cc. Mr. Michel Forst
Special Rapporteur on the Situation of Human Rights Defenders
c/o Office of the High Commissioner for Human Rights – Palais Wilson
United Nations Office at Geneva
CH 1211 Geneva 10, Switzerland Email: defenders@ohchr.org