

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

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

Statement: Timeline, Analysis and Recommendations 8 July 2015

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).

Introduction

Fourteen members of the student New Democracy Movement (NDM) may face prison terms up to seven years after being charged with sedition for twelve days by a military court for exercising their right to dissent and for participating in several peaceful, symbolic protests to mark the anniversary of Thailand's 22 May 2014 military coup. The 14 are charged with violating Order No. 3/2015 of the Head of National Council for Peace and Order (NCPO), which bans political gatherings of more than five persons, and under Article 116 of the *Criminal Code* for inciting public unrest (sedition). On 27 June 2015, a lawyer for the students, Ms. Sirikan Charoensiri of the Thai Lawyers for Human Rights (TLHR), was subjected to unlawful search of her motor vehicle. The Royal Thai Police have announced they are considering legal action against her and have visited her home and questioned her family members. On 6 July 2015, human rights defender, Mr. Baramee Chairat, coordinator of Thailand's Assembly of the Poor and a member of the board of Amnesty International Thailand, was formally accused of sedition under *Criminal Code* Article 116 for showing support for the 14 activists at a demonstration at Democracy Monument on 25 June 2015.

LRWC calls on Thailand authorities to drop all charges against the 14 activists and Mr. Baramee, end harassment of the activists' family members and their advocates including TLHR lawyers, academics and others, and comply with Thailand's international human rights obligations, including the obligation to guarantee the right to freedoms of expression, association and peaceful assembly, the right not to be arbitrarily detained and the right of civilians to be tried by civilian courts. This statement provides a background summary, a timeline of facts, analysis of human rights violations and recommendations.

The 14 persons charged and arbitrarily detained from 26 June to 7 July 2015 are:

Dao Din human rights defenders, Khon Kaen University (KKU) Faculty of Law

Mr. Phayu Boonsopon
Mr. Apiwat Soontarak
Mr. Supachai Phuklongploy
Mr. Panupong Sritananuwat
Mr. Suwicha Pitangkorn
Mr. Jatupat Boonpattaraksa
Mr. Wason Sethasit

Bangkok-based democracy activists

Mr. Rangsiman Rome, student, Faculty of Law, Thammasat University
Mr. Rattapon Supsoon, student, Faculty of Economics, Thammasat University
Mr. Songtham Kaewpanpruk, student, Rajamangala University of Technology
Ms. Cholticha Jang-rew, student, Faculty of Social Science, Srinakharinwirot University
Mr. Abhisit Suebnapa, graduate, Kasetsart University
Mr. Pakorn Areekul, graduate, Burapha University
Mr. Pornchai Yuanyee, graduate, Chulalongkorn University

Background facts and timeline

After the May 2014 declaration of martial law, Military Courts assumed jurisdiction over civilians pursuant to the *Martial Law Act* (1914)¹ and NCPO Order 37/2557.² On 1 April 2015, the NCPO replaced martial law with similar and expanded powers pursuant to Article 44 of an interim Constitution³ imposed by an unelected National Assembly selected by the NCPO which gives Military Courts jurisdiction over civilians in cases of lèse majesté (offending the monarchy), national security crimes, weapons offences and violations of NCPO orders.⁴ More than 750 civilians, most of them political dissidents or critics of the NCPO, have been sent for

¹ *Martial Law Act*, B.E. 2457 (1914), English translation available at

<http://www.thailawforum.com/laws/Martial%20Law.pdf>. For LRWC's position on the unlawfulness of the declaration of *Martial Law*, see "Thailand: Arbitrary Arrests and Incommunicado Detentions," 28 May 2004, available at <http://www.lrwc.org/thailand-arbitrary-arrests-and-incommunicado-detentions-letter/>.

² 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.html>; 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>

³ TLHR, Fact Sheet: The consequences of revocation of Martial Law and the Order of the Head of National Council for Peace and Order (NCPO) No. 3/2558 (2015), available at <https://tlhr2014.wordpress.com/2015/04/02/fact-sheet-the-consequences-of-revocation-of-martial-law-and-the-order-of-the-head-of-national-council-for-peace-and-order-ncpo-no-32558-2015/>. See Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014), unofficial translation, available at <http://lawdrafter.blogspot.ca/2014/07/translation-of-constitution-of-kingdom.html>; NCPO

Order Number 3/2558 (3/2015) on Maintaining Public Order and National Security, unofficial translation available at <http://www.prachatai.com/english/node/4933>; NCPO Order No. 5/2015 (Thai language), available at <http://www.ratchakitcha.soc.go.th/DATA/PDF/2558/E/085/1.PDF>, see "Thai junta expands definition of 'Assistant Peace-keeping Officer'," *Prachatai*, 16 April 2015, available at <http://www.prachatai.com/english/node/4970>

⁴ See Order Number 3/2558 (3/2015) of the Head of NCPO on Maintaining Public Order and National Security, unofficial translation available at *Prachatai*, <http://www.prachatai.com/english/node/4933>

trial in Military Courts since the 22 May 2014 coup.⁵ Students engaged with human rights issues in Thailand have faced restrictions of their activities and personal harassment since the military coup. The wider student and academic community has also faced repression as the military dictatorship seeks to clamp down on any activity which it deems as a potential threat to the stability of the regime. The pattern of arrests and prosecutions indicates that criticism of the NCPO, distribution of information, participation in public gatherings and participation in public debate about issues of concern are considered threats to national security. Military forces have cancelled TLHR educational events about human rights in Thailand on at least two occasions, including on 4 June 2015.⁶

The Dao Din Group has been conducting human rights advocacy for communities affected by development projects and extractive industries in Thailand's north-eastern Loei province, but after the 2014 coup their advocacy was restricted. Since the coup, the Dao Din Group has focused on advocacy for democracy and the right to freedom of assembly. They have organised peaceful protests against the military government, including showing a three-finger salute, an anti-coup symbol, in front of General Prayut Chan-o-cha in November 2014. Five students were arrested then and taken to the nearby Sri Patcharin military camp for "attitude adjustment."⁷ Since that time, for their acts of opposition to military rule and other peaceful human rights activities in solidarity with communities, Dao Din student activists and their families have been summoned, monitored and threatened by the military and police officers in an attempt to disrupt and dissuade them from continuing their peaceful human rights work.⁸ In June 2015, authorities

⁵ On 22 May 2014, in a coup d'état the NCPO took over all branches of the Royal Thai Government, terminated the 2007 Constitution and nullified the independence of the judiciary. On 22 May 2014, the NCPO issued Order No. 11/2557, which unlawfully repealed Thailand's 2007 Constitution and ordered that "[a]ll Courts shall continue to function and adjudicate on cases as prescribed by the law and the Announcement of the National Peace and Order Maintaining Council." Announcement of the National Peace and Order Maintaining Council No. 11/2557: Subject: Termination of the Constitution of the Kingdom of Thailand." On 24 May 2014, pursuant to Order No. 33/2557, the NCPO clarified Order 11/2557, stating:

With regard to the Announcement of the NCPO (formerly NPOMC) No. 11/2557 dated 22 May 2557 on the termination of the Constitution of the Kingdom of Thailand, which stipulates that all Courts are to continue to hear and adjudicate cases *according to* the law and *the Announcements of the NCPO*, and which requires all independent organizations and other agencies established under the Constitution B.E. 2550 (2007) to continue to function as usual; in order to ensure conformity of public understanding and unity in resolving the political conflict peacefully, the NCPO asked that all Courts, independent organizations and other agencies *refrain from expressing opinions which might create misunderstanding, confusion and polarization among the public such that it affects the functioning of the officers of the NCPO* (emphasis added). "Announcement of the National Peace and Order Maintaining Council No. 33/2557 Subject: Request for cooperation from the Courts, Independent Organizations and other Agencies.

These orders effectively strip courts of the independence and impartiality required by the ICCPR and thereby nullify fair trial rights. See Lawyers' Rights Watch Canada, "Thailand: Trials of civilians in military courts violate international fair trial rights: Judicial harassment of lawyers and human rights defenders;" LRWC

แถลงการณ์การไต่สวนคดีต่อพลเรือนในศาลทหาร ละเมิดสิทธิสากลว่าด้วยการพิจารณาคดีที่เป็นธรรม (translated by Cross Cultural Foundation, Statement, 25 May 2015, <http://www.lrwc.org/?p=9095>

⁶ Thailand: Military government shuts down lawyers' human rights education event, LRWC Statement, 5 June 2015, available at <http://www.lrwc.org/thailand-military-government-shuts-down-lawyers-human-rights-education-event-statement/>

⁷ Emma Arnold and Apisra Srivanich-Raper, "The Modern Thai Student Movement-Part II," *Prachatai*, 31 December 2014, available at <http://www.prachatai.com/english/node/4647>.

⁸ "Thai Authorities Visit Father of Anti-Junta Activist," *Prachatai*, 2 July 2015, available at <http://www.prachatai.com/english/node/5245>

have also visited and summoned members of communities in the northeast, including the Khon Rak Ban Koed group and the Neo E-saan Movement, who expressed public support for the seven students, to inquire about their linkages with the Dao Din group.⁹ Military authorities have justified their acts by claiming them to be a necessity for national security and stability.¹⁰ Relying on an overly broad interpretation of laws, the peaceful gatherings of the students were deemed by military authorities to be a breach of public order.¹¹

- **22 May 2015:** On the first anniversary of the 22 May 2014 coup, two groups of students staged peaceful, symbolic anti-coup protests.¹² Khon Kaen University (KKU) law students from the Dao Din human rights group held a seven-person demonstration at the Democracy Monument in the north-eastern city of Khon Kaen. The above-named seven Dao Din students were summoned to report to Khon Kaen police on 8 June 2015. On the same day, approximately fifty Bangkok-based students held a sit-in in front of the Bangkok Arts and Culture Centre (BACC) in Bangkok.¹³ After a crackdown by Bangkok police during which three demonstrators were injured, thirty-seven Bangkok demonstrators were detained and released.¹⁴ Several complained of being kicked or punched as they were forcibly arrested.
- **8 June 2015:** The seven Dao Din students refused to report to Khon Kaen police, saying the police order was unlawful and demanding that Article 44 of the interim constitution be revoked. The students announced the creation of the NDM.¹⁵
- **18 June 2015:** A spokesperson for the NCPO warned that if the students failed to surrender themselves to police by 19 June 2015, arrest warrants would be issued and that their family members might also be summoned.¹⁶
- **19 June 2015:** Nine Bangkok students and seven Khon Kaen students refused to report to the police pursuant to summonses to answer charges of violating Order No. 3/2015 of the Head of NCPO,¹⁷ which bans any political gathering of more than five persons. The seven Dao Din

⁹ “Thailand: Drop Charges Against Student Activists, Uphold Civil and Political Rights,” *Forum Asia*, 22 June 2015, available at <http://www.forum-asia.org/?p=19075>; Isan activist groups summoned for collaborating with anti-junta students, *Prachatai*, 16 June 2015, available at <http://www.prachatai.com/english/node/5155>.

¹⁰ Junta says international organizations don’t understand the Thai political context of the 14 activists’ arrests, *Prachatai*, 6 July 2015, available at <http://www.prachatai.com/english/node/5263>

¹¹ Cross Cultural Foundation, “Revoking arrest warrants against students and halting the trial of civilians in military court: The exercise of the right to peaceful and non-violence expression is not a crime,” 22 June 2015, available at <https://voicefromthais.wordpress.com/2015/06/22/revoking-arrest-warrants-against-students-the-exercise-of-the-right-to-peaceful-and-non-violence-expression-is-not-a-crime/>; “Thai army chief says the arrest of 14 embattled student activists ‘necessary,’” *Prachatai*, 27 June 2015, available at <http://www.prachatai.com/english/node/5214>

¹² Dao Din, “Declaration from the 7 Dao Din students facing charges for breaching NCPO Order 3/2558,” *Prachatai* 23 June 2015, available at <http://www.prachatai.com/english/node/5186>

¹³ Bangkok: students protest against military rule - Channel 4 News, YouTube, 22 May 2015, https://www.youtube.com/watch?v=2FLEpCr_ihA

¹⁴ Authorities stated they were not arrested but “invited for talks,” but an AFP reporter on the scene said they were dragged away by uniformed and plain-clothed police, *AFP/Daily Mail* 22 May 2015, <http://www.dailymail.co.uk/wires/afp/article-3093764/Detained-Thai-students-merely-invited-talks-police.html>

¹⁵ Anti-coup group plans to launch civil disobedience, *The Nation*, 9 June 2015, available at <http://www.nationmultimedia.com/politics/Anti-coup-group-plans-to-launch-civil-disobedience-30261913.html>

¹⁶ Police Deadline for Anti-Coup Student Activists to Surrender Expires, *Khaosod*, 19 June 2015, <http://www.khaosodenglish.com/detail.php?newsid=1434712246§ion=11&typecate=06>

¹⁷ ILAW, Unofficial translation of Thai junta’s order, replacing martial law with Section 44 of interim charter (Order 3/2015), *Prachatai*, <http://www.prachatai.com/english/node/4933>

students issued a public statement¹⁸ giving reasons for their refusal to answer the summons and inviting authorities to arrest them in Loei province, Wang Saphung district, Nanongbong village, to symbolize their solidarity with the Loei community's struggle against oppression, which they stated inspired them to be part of the movement for social justice. More than 100 military and police officers were deployed in Khon Kaen province on 19 June to monitor any movement of the Dao Din group and to suppress their activities. On the same day, three women Dao Din students were arrested in Khon Kaen while they lay on the portraits of their seven fellow students at the Khon Kaen democracy monument; the three were taken to Sripacharin military camp for questioning before being released three hours later.¹⁹

- **24 June 2015:** Bangkok-based student activists attended the Pathumwan Police Station in Bangkok not to surrender but to attempt to file a complaint about police misconduct during the crackdown on the 22 May 2015 demonstration. Police refused to accept the complaint. Dao Din students joined the group at the police station, and together they read out a manifesto announcing formation of the New Democracy Movement (NDM) and calling on people to join the movement. By early evening, several hundred students had joined the demonstration.²⁰
- **25 June 2015:** The 14 activists conducted a peaceful demonstration in Bangkok in which they walked to several symbolic landmarks including a monument to the October 1973 Student Uprising, a memorial to the 1976 massacre of student activists at Thammasat University, and Democracy Monument which they draped in a black banner. The demonstration ended at 7:00 pm.²¹ At approximately 1:00 pm, a number of students had attended Pathumwan Police Station where they successfully filed complaints of assault against three security officers involved in arrests of demonstrators on 22 May.²²
- **26 June 2015:** The above-named 14 students were all arrested at approximately 5:30 pm at the Suan Ngern Meema hostel, Charoen Nakhon district, Bangkok.²³ Police and army officers arrested them pursuant to a Military Court warrant on charges under Order No. 3/2015 of the Head of NCPO and *Criminal Code* Articles 116 and 83 for peacefully demonstrating on 25 June 2015.²⁴
- **27 June 2015:** At 12:30 am in the early morning of 27 June 2015, the Bangkok Military Court ordered that the fourteen students be held in custody. The men students were held in the Bangkok Remand Prison. The woman student, Ms. Cholticha Jang-rew was detained in the Women's Correctional Institution. Following the military court hearing, police asked the

¹⁸ Dao Din, "Declaration from the 7 Dao Din students facing charges for breaching NCPO Order 3/2558," *Prachatai* 23 June 2015, available at <http://www.prachatai.com/english/node/5186>

¹⁹ Three students briefly detained in Khon Kaen, *Bangkok Post*, 19 June 2015

<http://www.bangkokpost.com/news/politics/597752/three-students-briefly-detained-in-khon-kaen>

²⁰ Students file charges against police, *The Nation* 25 June 2015,

<http://www.nationmultimedia.com/politics/Students-file-charges-against-police-30263064.html>

²¹ No Arrests at Pro-Democracy Demonstration in BK, Khaosod, 25 June 2015, available at

<http://www.khaosodenglish.com/detail.php?newsid=1435239096>; also see photos at "Pro-democracy students protest at Democracy Monument," *Coconuts Bangkok*, 25 June 2015, available at

<http://bangkok.coconuts.co/2015/06/25/pro-democracy-students-protest-democracy-monument>

²² Pro-Democracy Activists File Assault Charges Against Police, Soldiers, *Khaosod*, 25 June 2015, available at <http://www.khaosodenglish.com/detail.php?newsid=1435220222>

²³ "Student Activists Arrested for Anti-Coup March in Bangkok," *Khaosod*, 26 June 2015, available at <http://www.khaosodenglish.com/detail.php?newsid=1435318843§ion=11&typecate=06>

²⁴ Timeline: Struggle for democracy of 14 embattled anti-junta activists, *Prachatai*, 30 June 2015, available at <http://www.prachatai.com/english/node/5226>

students' lawyer, Ms. Sirikan Charoensiri, for her permission to search her car for the students' phones. She refused to consent to a search without a warrant. Police responded by impounding her car, which contained the lawyer's case files, personal computers and five telephones belonging to the students. In the early afternoon, Ms. Sirikan went to the police station to file a complaint against the police regarding unlawful seizure of her car. The police refused to accept the complaint. Instead they searched her car with a warrant they had obtained without advising the court that the vehicle belonged to a lawyer of the alleged offenders.²⁵ Five phones belonging to the students were seized as evidence.²⁶ 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.²⁷ Police finally accepted her complaint at 11:00 pm.

- **28 June 2015:** A senior police officer advised media that they had found “important evidence” in Ms. Sirikan’s motor vehicle and that criminal charges against her were being considered.²⁸
- **29 June 2015:** Police visited Ms. Sirikan’s family home and asked her parents to identify her in photos and questioned them about her background.²⁹ Also that day, police arrested and interrogated three persons in Chiang Mai after ten activists held a brief pro-democracy demonstration wearing masks depicting the 14 detained students.³⁰
- **2 July 2015:** The imprisoned men students were separated into small groups and placed in different locations in the Bangkok Remand Prison. The same day, Prof. Yodpol Thepsithar, a law professor at Naresuan University, was reportedly visited by a group of police officers at his office after he and 280 lecturers signed a petition calling for the immediate and unconditional release of the 14 activists.³¹
- **3 July 2015:** Police commenced pre-trial questioning of the student activists. The thirteen men students were separated into small groups and placed in separate locations in the prison for interrogation purposes.³² The men insisted on postponing the interrogation because conditions in the interrogation room made it difficult for the defence lawyer to listen to the interrogation of their clients.³³ The activists stated their demand for trials before civilian

²⁵ 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/>

²⁶ 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/>

²⁷ Probe into students' 'backers', *The Nation*, 29 June 2015, available at <http://www.nationmultimedia.com/politics/Probe-into-students-backers-30263315.html>

²⁸ ICJ 2 July 2015, supra note 26

²⁹ *Ibid.*

³⁰ Three Arrested in Chiang Mai After Pro-Democracy Rally Outside US Consulate, *Khaosod*, 29 June 2015, available at <http://www.khaosodenglish.com/detail.php?newsid=1435584252&typecate=06§ion=>

³¹ Family of Imprisoned Anti-Coup Activist 'Intimidated' By Soldiers, *Khaosod*, 2 July 2015, <http://www.khaosodenglish.com/detail.php?newsid=1435837870§ion=11>; “Junta Dismisses Calls from EU, UN to Release Pro-Democracy Activists,” *Khaosod*, 1 July 2015, available at <http://www.khaosodenglish.com/detail.php?newsid=1435733124§ion=11>.

³² Thai Justice Minister Defends Separating Anti-Coup Activists in Prison, *Khaosod*, 3 July 2015, available at <http://www.khaosodenglish.com/detail.php?newsid=1435907639§ion=00>

³³ One of the 14 anti-junta activists says she is only exercising her rights as a citizen, *Prachatai*, 6 July 2015, available at <http://www.prachatai.com/english/node/5260>

court, saying they refused to seek bail from a military court, which has no lawful authority over civilians.³⁴ Ms. Cholticha, the only woman student to be detained, was transferred to the prison hospital for treatment. Prior to her arrest, she had been diagnosed with a herniated spinal disk after police forcefully dragged her away from the 22 May 2015 demonstration at the BACC.³⁵ Ms. Cholticha reports that she denied all charges, advising interrogators: “I think what I did was my right as a citizen in accordance with the *International Covenant on Civil and Political Rights* of the UN to which Thailand is a party, and the National Council for Peace and Order (NCPO) is not a legitimate government, and has taken away the power of the people, which is treason.”³⁶

- **6 July 2015:** Army Chief Udomdej Sitabutr announced that the 14 activists would not be released before facing a military court. Also that day, a human rights defender, Mr. Baramee Chairat, a member of the board of Amnesty International Thailand and a coordinator of the Assembly of the Poor, received a summons to appear at Samranraj Police Station in Bangkok by 10 July 2015 to answer charges of sedition under *Criminal Code* Article 116, reportedly for supporting the 14 activists at the 25 June 2015 Democracy Monument demonstration.³⁷
- **7 July 2015:** A hearing for the 14 activists at the Bangkok Military Court was held. The students declined to seek bail. A police application for extension of detention for another twelve days was denied by the Military Court which stated that police had completed their inquiry, and there were no reason for further detention.³⁸
- **8 July 2015:** The 14 activists were released without conditions or bail at 6 am on 8 July 2015 after the full 12 days of the previous detention order expired. However, no charges have been dropped, and no trial date has been set.

Systematic violations of international human rights law

The judicial harassment and intimidation of the Dao Din students and other human rights defenders and activists in Thailand is part of an increasingly disturbing and worsening trend since the military coup in May 2014 to systematically use the *Criminal Code* and military orders, such as Order 3/2015 of the Head of NCPO³⁹ pursuant to Article 44 of the interim Constitution,⁴⁰ for political purposes to silence lawful dissent and to repress the exercise of rights to freedoms of expression, association and peaceful assembly guaranteed by Articles 19, 21 and 22 of the *International Covenant on Civil and Political Rights* (ICCPR).⁴¹ Thailand’s use of Military Courts to try civilians is a systematic denial of fair trial rights recognized by the

³⁴ Arrested students plan to ask for an open trial, *Thai PBS*, 3 July 2015, available at <http://englishnews.thaipbs.or.th/arrested-students-plan-to-ask-for-an-open-trial>

³⁵ One of 14 Jailed Activists Will be Transferred to Prison Hospital, Official Says, *Khaosod*, 2 July 2015, available at <http://www.khaosodenglish.com/detail.php?newsid=1435840590§ion=11>

³⁶ One of the 14 anti-junta activists says she is only exercising her rights as a citizen *Prachatai*, 6 July 2015, available at <http://www.prachatai.com/english/node/5260>

³⁷ High profile Thai CSO worker accused of sedition for supporting 14 activists, *Prachatai*, 7 July 2015, <http://www.prachatai.com/english/node/5276>

³⁸ The 14 embattled anti-junta activists vow to struggle on without bail, *Prachatai*, 3 July 2015, available at <http://www.prachatai.com/english/node/5253>

³⁹ See NCPO Order Number 3/2558(3/2015) on Maintaining Public Order and National Security, unofficial translation available at <http://www.prachatai.com/english/node/4933>.

⁴⁰ See Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014), unofficial translation, available at <http://lawdrafter.blogspot.ca/2014/07/translation-of-constitution-of-kingdom.html>;

⁴¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>;

Universal Declaration of Human Rights and guaranteed by the ICCPR Articles 9 and 14 which Thailand ratified in 1996.

Unlawful derogations from the ICCPR

While ICCPR, Article 4(1) permits States to temporarily derogate from certain rights guaranteed in the ICCPR in time[s] of public emergency, the United Nations (UN) Human Rights Committee (HR Committee), the international expert body that monitors state compliance with the ICCPR, affirms that derogations during a state of emergency are to be “exceptional and temporary” and must be invoked only when the life of the nation is threatened and then only to the extent strictly necessary.⁴² Deviations from the ICCPR during a state of emergency must be proportionate to the level of threat or legitimate objective to be achieved. The HR Committee affirms that States must “provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation.”⁴³ Thailand has provided no such justification. The HR Committee also affirms that States may “in no circumstances” derogate provisions of the ICCPR to justify “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.”⁴⁴ The UN Working Group on Arbitrary Detention affirms that “[t]he 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.”⁴⁵ Thailand’s use of Military Courts to try civilians violates this standard.⁴⁶

Unlawful Military Court jurisdiction over civilians

Thailand’s Military Court system fails to provide the fair trial rights guaranteed by Article 14 of the ICCPR, including the right to have criminal charges determined “by a competent, independent and impartial tribunal established by law.” Many of the charges against civilians facing Military Courts involve denials of rights to freedoms of expression, association and assembly, and many civilians, including human rights defenders, have been arbitrarily detained as a result of exercising internationally protected freedoms. International human rights law prohibits States from using Military Courts to try civilians when civilian courts are functioning

⁴² *Ibid.*

⁴³ Human Rights Committee, *General Comment 29, States of Emergency (article 4)*, para. 5. [http://www.unhcr.ch/tbs/doc.nsf/0/71eba4be3974b4f7c1256ae200517361/\\$FILE/G0144470.pdf](http://www.unhcr.ch/tbs/doc.nsf/0/71eba4be3974b4f7c1256ae200517361/$FILE/G0144470.pdf). There is a high threshold to prove that an actual state of emergency exists. The *travaux préparatoires* of the ICCPR regarding Article 4 indicate that: “The main concern was to provide for a qualification of the kind of public emergency in which a State would be entitled to make derogations from the rights contained in the Covenant which would not be open to abuse. The . . . wording is based on the view that the public emergency should be of such a magnitude as to threaten the life of the nation as a whole.” 10 GAOR Annexes, UN Doc. A/2929, part II, ch. 5, para. 39 (1955).

⁴⁴ UN Human Rights Committee (HR Committee), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11, para.5, available at: <http://www.refworld.org/docid/453883fd1f.html>

⁴⁵ 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>.

⁴⁶ Lawyers’ Rights Watch Canada, “Thailand: Trials of civilians in military courts violate international fair trial rights: Judicial harassment of lawyers and human rights defenders;” LRWC แถลงการณ์การไต่สวนคดีต่อพลเรือนในศาลทหาร ละเมิดสิทธิสากลว่าด้วยการพิจารณาคดีที่เป็นธรรม (translated by Cross Cultural Foundation, Statement, 25 May 2015, available at <http://www.lrwc.org/?p=9095>

and available. The HR Committee has stated in its General Comment on the right to a fair trial that “the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned.”⁴⁷ This is particularly problematic in Thailand, where every element of Military Courts functions within the Defense Ministry’s chain of command.

Unlawful use of force against peaceful demonstrators

The alleged assaults by state officials in carrying out the arrests on 22 May in Bangkok are contrary to the UN *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.⁴⁸ In policing demonstrations, all members of the security forces must abide by these principles, which provide that authorities shall, as far as possible, apply nonviolent means before resorting to the use of force.

Unlawful violation of activities of human rights defenders

The UN *Declaration on Human Rights Defenders*, adopted by consensus of the UN General Assembly in 1999,⁴⁹ recognizes the legitimacy and importance of the activities of human rights defenders, including their right to participate in peaceful activities against violations of human rights, and calls on States to ensure that they can carry out their activities without fear of reprisals. In particular, Article 12 of the *Declaration on Human Rights Defenders* states:

- (1) Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
- (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.

Violation of lawyers’ right to represent their clients without harassment or interference

The UN *Basic Principles on the Role of Lawyers*⁵⁰ mandate that

⁴⁷ 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, available at: <http://www.refworld.org/docid/453883f90.html>

⁴⁸ *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990), available at <https://www1.umn.edu/humanrts/instreet/i2bpuff.htm>.

⁴⁹ 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 (*Declaration on Human Rights Defenders*), 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.

⁵⁰ *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

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.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

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

On 30 June 2015, the Human Rights Council passed a unanimous resolution *condemning* “the increasingly frequent attacks on the independence ... lawyers..., in particular threats, intimidation and interference in the discharge of their professional functions,” and reminding all States of their 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...”⁵¹

Recommendations

LRWC calls upon Thailand to:

1. Immediately ensure that all charges against the 14 activists are dropped and put an immediate end to their judicial harassment and intimidation;
2. Immediately ensure that all charges against Mr. Baramee Chairat are withdrawn;
3. Put an immediate end to all harassment and intimidation of the student activists' family members and advocates, including TLHR lawyers, university professors and others supporting their legitimate human rights activities;
4. 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 Order 3/2015 of the Head of the NCPO and Article 44 of the interim Constitution, and ensure compliance with the ICCPR including protections of freedoms of expression, association and assembly;

the *Basic Principles* in its resolution on “Human rights in the administration of justice,” adopted by consensus (without a vote) 18 December 1990.

⁵¹ 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.

5. 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.⁵²
6. 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 working on rights to 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*;
7. Ensure that Thailand's Constitution adheres to all international human rights binding on Thailand, and restore democratic rule through free and fair elections.

⁵² 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>