

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: Cease intimidation, arbitrary arrests and judicial harassment in Military Courts of peaceful civilian human rights defenders and democracy activists

**Statement
5 February 2016**

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 disturbed by reports of charges brought in Military Court against 11 human rights defenders and democracy activists for organizing a visit to Rajabhakti Park in Hua Hin to draw attention to allegations of corruption in relation to construction of the park, a military-sponsored project featuring giant statues of seven former kings of Thailand. Both the interference with the activists' freedom of expression and the charges against them are in violation of Thailand's international human rights obligations under the *International Covenant on Civil and Political Rights* (ICCPR).¹ Five of the activists were arrested on 20 and 21 January 2016. One was reportedly ill-treated during arrest in violation of the ICCPR and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).² All 11 activists face Military Court trials in violation of their right as civilians to have charges against them determined by civil courts that are independent, impartial and competent courts in accordance with the ICCPR.³

The 11 persons charged (listed in the chart below) are among 36 human rights and democracy activists who were previously arrested on 7 December 2015 ostensibly for violating the Head of National Council for Peace and Order (NCPO) Order No. 3/2015 that prohibits political gatherings of five or more people without prior permission. Military authorities arrested the 36 at

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

² UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, available at: <http://www.refworld.org/docid/3ae6b3a94.html>.

³ LRWC disagrees with the Ministry of Foreign Affairs statements that: "There is no difference between the adjudication process in the military court and the civilian courts...". (MFA: <http://www.mfa.go.th/main/en/media-center/14/63981-The-case-of-Mr.-Thanet-Anantawong%E2%80%99s-arrest.html>). In particular, Military Courts are not independent of the executive branch of Thailand and do not qualify as impartial, independent courts as required by the ICCPR, Article 14. For more detail, see 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>.

a train station while they were on their way to Rajabhakti Park in Hua Hin to demand an investigation into allegations of corruption in construction of the park. The 36 activists spent several hours in military detention without access to lawyers. Twenty-five of the activists were released after signing pledges not to join any political movement in the future and not to leave Thailand without permission. The other 11 activists refused to sign the pledge and were then charged with violating the Head of NCPO Order No. 3/2015 and summoned to appear at the Thonburi Railway Police Station on 22 December 2015. Five of the eleven reported to the police station as directed. Another five did not, and on 13 January 2016, the Bangkok Military Court issued a warrant for their arrest; these five were arrested on 20 or 21 January. One of the 11 activists, Mr. Thanet Anantawong,⁴ was arrested at Sirindhorn Hospital, Bangkok, on 13 December 2015 and detained incommunicado in an unknown location until taken to the Military Court on additional charges. The Military Court released Mr. Thanet on bail on 18 December, directing that he report to the Military Court on 29 December; when he did not appear, a warrant for his arrest was issued. He has reportedly fled Thailand to seek asylum in another country. The Military Court will decide whether the 11 civilian activists will face a Military Court trial. If convicted, they face up to six months' imprisonment and/or a fine of up to 10,000 baht (US\$280).

Eleven activists charged with violation of Head of NCPO Order No. 3/2015	Response to summons to appear at Thonburi Police Station on 22 December 2015	Arrest and release dates
1. Mr. Anon Nampa (lawyer)	Appeared according to summons	No arrest warrant
2. Mr. Wisarut Anukulkanm	Appeared according to summons	No arrest warrant
3. Ms. Kornkanok Khumta	Appeared according to summons	No arrest warrant
4. Mr. Vichit Hanhaboon	Appeared according to summons	No arrest warrant
5. Mr. Kititituch Suman	Appeared according to summons	No arrest warrant
6. Mr. Sirawit Seritiwat	No appearance to summons; arrest warrant issued	Arrested and reportedly ill-treated 20/01/16, Released by Military Court 21/01/16

⁴ Mr. Thanet Anantawong is reported to have sought asylum in another country. He also faces charges of spreading false information on social media in violation of *Criminal Code* s.116 (sedition) and the *Computer Crimes Act* after allegedly sharing an infographic on Facebook alleging corruption by government officials in relation to construction of Rajabhakti Park in Hua Hin. Mr. Thanet was arrested on 13 December 2015 in disputed circumstances. Mr. Thanet claims he was arrested while in his hospital room; authorities claim he was arrested after leaving the hospital. According to the Ministry of Foreign Affairs, he was released 14 December 2015 on bail of 100,000 Baht (MFA Press Release, 26 January 2016, <http://www.mfa.go.th/main/en/media-center/14/63981-The-case-of-Mr.-Thanet-Anantawong%E2%80%99s-arrest.html>). However, reports of his lawyers state that on 14 December Mr. Siriwat and the Thai Lawyers for Human Rights filed a habeas corpus application to the Criminal Court, which the Court denied on 15 December (TLRH <https://tlhr2014.wordpress.com/2015/12/15/court-dismissed-a-habeas-corpus-motion-into-unlawful-detention-of-activist-arrested-from-hospital/>). He was reportedly held incommunicado in an undisclosed location until he was granted bail by the Military Court on 18 December 2015 (TLHR, <https://tlhr2014.wordpress.com/2015/12/25/11-thai-activists-demanding-probe-on-corruptions-in-thai-army-rajabhakti-park-at-risk-of-arrest/>). Mr. Thanet failed to report to the court on 29 December 2016 as directed by the terms of his bail, and it is reported that he has sought political asylum in another country. See *Bangkok Post*, 17 January 2016, available at <http://www.bangkokpost.com/news/politics/828912/activist-wanted-on-lese-majeste-flees-abroad>.

Eleven activists charged with violation of Head of NCPO Order No. 3/2015	Response to summons to appear at Thonburi Police Station on 22 December 2015	Arrest and release dates
7. Ms. Chonthicha Jaeung-Rew,	No appearance to summons; arrest warrant issued	Arrested and released by Military Court 21/01/15
8. Mr. Korakoch Saengyenpan	No appearance to summons; arrest warrant issued	Arrested and released by Military Court 21/01/16
9. Ms. Chanoknan Ruamsap	No appearance to summons; arrest warrant issued	Arrested and released by Military Court 21/01/16
10. Mr. Abhisit Sarnaphapan	No appearance to summons; arrest warrant issued	Arrested 21/01/16; released by Military Court 22/01/16
11. Mr. Thanet Anantawong	Arrested 13/12/15 at hospital; released on bail 18/12/15. Failed to report to court 29/12/15 pursuant to terms of his bail; arrest warrant issued. For detail see footnote 5.	Has reportedly sought asylum in another country

Alleged ill-treatment during arrest of Mr. Sirawit Seritiwat by military officers⁵

On 20 January 2016 at approximately 10:30 pm, eight men wearing military uniforms grabbed Mr. Sirawit Seritiwat and forced him into a vehicle while he was walking with friends outside the gate of the Thammasat University (Rangsit campus) near Bangkok. Witnesses, who took a photograph, indicate that the men pushed Mr. Sirawit into a pickup truck which had its license plate covered and drove him away to an undisclosed destination. Mr. Sirawit reports that the men failed to identify themselves, and he was not shown an arrest warrant. He also reports he was blindfolded, and when the vehicle stopped, he was taken to a grassy area, forced to kneel, kicked, and an object was held at his head that he suspected to be a rifle barrel, as he heard the sound of a gun being cocked. At approximately 1:00 am, he was taken blindfolded to the Nimitmai police station in Bangkok by members of the 2nd Battalion of the Army's 2nd Infantry Regiment. Mr. Sirawit was held there until the following morning, when he was transferred to the Thonburi Railway Police Station in Bangkok. The NCPO denied knowledge of Mr. Sirawit's arrest or knowledge of his whereabouts until approximately 2:50 am on 21 January 2016 when police confirmed he was detained at the Nimitmai police station. His access to lawyers was denied.

Arrest of four other students on 21 January 2016

On 21 January 2016 at approximately 9:00 am, police arrested Ms. Chonthicha Jaeung-Rew, Ms. Chanoknan Ruamsap, and Mr. Korakot Saengyenpan, who had attended the Thonburi Railway Police Station in support of Mr. Sirawit. The three students were held at the police station until

⁵ See OMCT, Thailand: Arrest followed by the release of five of the 11 activists facing judicial harassment, OMCT HA 001 / 0116 / OBS 008.1, January 25, 2016 <http://www.omct.org/human-rights-defenders/urgent-interventions/thailand/2016/01/d23583/>; Amnesty International, Thailand: Drop All Charges Against 11 Activists (UA 7/16), 22 January 2016 <http://www.amnestyusa.org/get-involved/take-action-now/thailand-drop-all-charges-against-11-activists-ua-716>; Thai Lawyers for Human Rights (TLHR), Activist abducted in the middle of night, allegedly harassed and threatened, 21 January 2016, <https://tlhr2014.wordpress.com/2016/01/21/activist-abducted-in-the-middle-of-night-allegedly-harassed-and-threatened/>; FIDH, Thailand: Ongoing judicial harassment against 11 activists, FIDH, 18 January 2016, <https://www.fidh.org/en/issues/human-rights-defenders/thailand-ongoing-judicial-harassment-against-11-activists>.

1:30 pm along with Mr. Sirawit before being taken to the Bangkok Military Court where the court dismissed a police request for pre-trial detention. The four students were released at approximately 4:00 pm. At that time, Mr. Abhisit Sarnaphapan was arrested in front of the Military Court and taken to the nearby Chanasongkram police station, before being transferred to the Thonburi Railway police station; the Bangkok Military Court released him on January 22 after rejecting a police request for pre-trial detention.

LRWC calls upon authorities in Thailand to:

- Immediately and unconditionally drop all charges against the 11 activists and cease all judicial and other harassment against them;
- Cease all judicial and other harassment against other peaceful human rights defenders in Thailand;
- Ensure the rights of all those arrested or detained in Thailand including rights to immediate access to lawyers in accordance with the ICCPR article 14.3, and freedom from all forms of ill-treatment or torture in accordance with the ICCPR articles 7 and 10.1 and the CAT, which states that:
 - “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (Article 2.1.);
 - “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture” (Article 2.2);⁶
- Ensure a timely and independent investigation of the allegations of ill-treatment of Mr. Sirawit and all others alleged to have been tortured or ill-treated while in custody in accordance with the ICCPR Article 2 and the CAT articles 2 and 12 and in compliance with *The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*⁷ which also impose the obligation to “investigate all cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law” (Art. 3(b)).
- Ensure that all human rights defenders in Thailand are able to carry out their legitimate human rights education and advocacy without hindrance in accordance with the United Nations *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders)*;⁸

⁶ CAT, *supra* note 2.

⁷ GA Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, Articles 18 and 22.

⁸ 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

- Put an immediate end to the restrictions arbitrarily imposed by the NCPO on the internationally protected rights to expression, assembly and association, including repeal of the Head of the NCPO Order 3/2015 and Article 44 of the interim Constitution,⁹ pursuant to the ICCPR, which Thailand ratified in 1996;
- 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;¹⁰
- 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*, which states that:
 - “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);¹¹
- 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;
- Ensure that all authorities in Thailand refrain from “threats, intimidation and interference [with lawyers] in the discharge of their professional functions,” and uphold the State duty

ICCPR. The Declaration was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation.

⁹ 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>.

¹⁰ 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>.

¹¹ *Declaration on Human Rights Defenders*, *supra* note 9.

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

“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...”¹³ in accordance with the UN *Basic Principles on the Role of Lawyers*¹⁴ 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;

- As agreed in Thailand’s last Universal Periodic Review in 2012, ratify the *International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)*¹⁵ which requires States to “take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.” Article 2 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;

- Ensure that Thailand’s Constitution adheres to all international human rights binding on Thailand, and restore democratic rule through free and fair elections.

¹³ 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.

¹⁴ *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.

¹⁵ UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, available at: <http://www.refworld.org/docid/47fdfaeb0.html>.