



THAILAND

Human Rights Committee Consideration of the Second Periodic Report of Thailand

Submission

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I Introduction

Submitting Party

1. Lawyers for Lawyers (L4L) is an independent Netherlands foundation, funded by lawyers' donations. The foundation was established in 1986 and has special consultative status with ECOSOC since 2013.¹
2. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession, in conformity with international law, including but not limited to the International Covenant on Civil and Political Rights (ICCPR) and the Basic Principles on the Role of Lawyers (Basic Principles)² of the United Nations. We support lawyers across the world who are threatened or suppressed as a result of discharging their professional functions and we promote the proper role of lawyers.³
3. On 12 August 2016, the Human Rights Committee ('the Committee') adopted a List of Issues in relation to the second periodic report of Thailand, in response to which Thailand submitted a reply.
4. During its 119th session, from 6 March to 29 March 2017, the Committee will consider the second report submitted by Thailand under Article 40 of the Covenant and adopt concluding observations that will assist Thailand in the implementation of the Covenant. In the context of this review, Lawyers for Lawyers wishes to provide comments on the questions raised in the List of Issues, and address issues that were not raised in the List of Issues with a view to getting them appropriately addressed during the dialogue with the State.

II Executive Summary

Issues

5. This submission outlines L4L's key areas of concern about the failure of the Thai government to comply with its international human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the Basic Principles, which is required to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the ICCPR, and protect the right to freedom of expression of lawyers, in accordance with Article 19 of the ICCPR.
6. In its List of Issues, the Committee requested the Thai government to provide information on measures taken to protect human rights defenders and community leaders against harassment, reprisals and attacks⁴, and to comment on reports

¹ For more information visit our website: <http://www.advocatenvooradvocaten.nl/about-us/>

² Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Subsequently, the UN General Assembly "welcomed" the Basic Principles in their 'Human rights in the administration of justice' resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly. ('Basic Principles').

³ For more information visit our website: <http://www.advocatenvooradvocaten.nl/what-we-do/>

⁴ List of issues in relation to the second periodic report of Thailand, Human Rights Committee, 12 August 2016, CCPR/C/THA/Q/2, par. 14

indicating that the right to freedom of expression and peaceful assembly have been severely restricted, including through the banning of public events related to human rights and democracy.⁵ The Thai government has responded to this questions, however, no information was given about the situation of lawyers in Thailand.

7. In this report, Lawyers for Lawyers wishes to provide comments on the questions raised in the List of Issues, and address issues that were not raised in the List Of Issues with a view to getting them appropriately addressed during the dialogue with the State, with respect to the situation of lawyers in Thailand. The Thai authorities do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. Lawyers are regularly subjected to threats, intimidation and improper interference or attempts to put pressure on them by members of law enforcement agencies or the military. Some lawyers are even subjected to criminal proceedings, in connection to their legitimate professional activities. Furthermore, several public events relating to human rights, organized by lawyers, have been banned. As a result, lawyers are not in an equal position to represent their clients. We therefore call on the Committee to make the following recommendations:

Recommendations

8. **Thailand should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with Article 14 of the Covenant and Article 22 of the Basic Principles on the Role of Lawyers.**
9. **Thailand should take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with Article 14 of the Covenant and Articles 16 and 18 of the Basic Principles on the Role of Lawyers.**
10. **Thailand should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with Article 14 of the Covenant and Article 16 of the Basic Principles on the Role of Lawyers.**
11. **Thailand should take measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in Article 19 of the ICCPR and Article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.**

⁵ List of issues in relation to the second periodic report of Thailand, Human Rights Committee, 12 August 2016, CCPR/C/THA/Q/2, par. 19

III Substantive Part - The implementation of article 14 of the Covenant by Thailand

A. Effective Mechanisms for the Protection of Human Rights

12. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are able to carry out their professional activities independently. This follows from – amongst other international instruments - the ICCPR.
13. Interference with the work of lawyers may lead to violations of the right to a fair trial under Article 14 of the Covenant, as has been recognized by the Committee.⁶ In particular, the Committee has stated that *'lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter'*.⁷ Lawyers should also be able to *'meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications'*.⁸
14. In its task of promoting and ensuring the proper role of lawyers, the government of Thailand should respect and take into account the Basic Principles within the framework of its national legislation and practice.⁹ Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.¹⁰
15. In its concluding observations of 8 July 2005, the Human Rights Committee expressed concerns at the number of incidents against human rights defenders and community leaders, including intimidation and verbal and physical attacks, enforced disappearances and extrajudicial killings.¹¹ The Human Rights Committee urged the government of Thailand to *"take measures to immediately halt and protect against harassment and attacks against human rights defenders and community leaders"* and *"systematically investigate all reported instances of intimidation, harassment and attacks and guarantee effective remedies to victims and their families"*.¹²

⁶ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, para.34. See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, especially article 12.

⁷ Idem, para. 34

⁸ Idem, para. 34

⁹ Basic Principles, Preamble, paragraph 11.

¹⁰ Basic Principles, Preamble, paragraph 9.

¹¹ Concluding observations of the Human Rights Committee THAILAND, 8 July 2005, CCPR/CO/84/THA, par. 19

¹² Id.

16. In its List of Issues, the Committee asked the Thai government to “provide information on measures taken to protect human rights defenders and community leaders against harassment, reprisals and attacks.”¹³ Furthermore, the Committee asked the Thai government to comment on “reports indicating that, since May 2014, the right to freedom of expression and peaceful assembly has been severely restricted, including through the banning of public events related to human rights and democracy.”¹⁴

17. In its reply to the List of Issues, the Thai government commented that “It is the Government’s duty to ensure that human rights defenders can carry out their work in a safe and enabling environment”, and that “In 2014, the Working Committee on development of measures to protect human rights defenders was established by MOJ and started discussion on the current situation faced by human rights defenders, the legislations and best practices from different countries, and the UN Declaration on Human Rights Defenders”.¹⁵ Furthermore, the comments provided by the Thai government on reports indicating that “since May 2014, the right to freedom of expression and peaceful assembly has been severely restricted, including through the banning of public events related to human rights and democracy”¹⁶, do not specifically address the banning of public events related to human rights and democracy.¹⁷

18. In this report, we outline information indicating that in practice, the Thai authorities do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. We welcome the efforts of the Thai government to develop measures to protect human rights defenders. However, lawyers, who are also human rights defenders, are regularly subjected to threats, intimidation and improper interference or attempts to put pressure on them by members of law enforcement agencies or the military. Some lawyers are even subjected to criminal proceedings, in connection to their legitimate professional activities. As a result, lawyers are not in an equal position to represent their clients. This violates the right to a fair trial as set out in Article 14 of the

¹³ List of issues in relation to the second periodic report of Thailand, Human Rights Committee, 12 August 2016, CCPR/C/THA/Q/2, par. 14

¹⁴ List of issues in relation to the second periodic report of Thailand, Human Rights Committee, 12 August 2016, CCPR/C/THA/Q/2, par. 19

¹⁵ List of issues in relation to the fourth periodic report of Thailand, Addendum: Replies of Thailand to the list of issues, 15 November 2016, CCPR/C/THA/Q/2/Add.1, par. 84 & 85

¹⁶ List of issues in relation to the second periodic report of Thailand, Human Rights Committee, 12 August 2016, CCPR/C/THA/Q/2, par. 19

¹⁷ List of issues in relation to the fourth periodic report of Thailand, Addendum: Replies of Thailand to the list of issues, 15 November 2016, CCPR/C/THA/Q/2/Add.1, par. 110, 111, 112, 113, which read:

110. Human rights activists are protected in the same way as all persons in Thailand under the law. However, given the political conflicts which the country has experienced over the past few years, some limitations are deemed necessary to prevent further social divisiveness and political conflicts. It is not permissible to allow people to incite hatred against one another, simply because they may hold different political opinions.

111. It is also important to always distinguish constructive debate from the expression of hatred with a political agenda that is aimed at creating more violence and polarization of the society. It has never been the intention by the Government to impose restrictions to ordinary citizens who have well intention particularly those who are willing to participate meaningfully in the reform process of the country.

112. Section 116 of the Criminal Code aims to prohibit the use by words, writings or any other means that (1) brings about change in the laws of the Country or the Government by the use of force or violence (2) raises unrest and disaffection amongst the people in a manner likely to cause disturbance in the country and (3) causes the people to transgress the laws of the Country. This does not apply to those who peacefully express political opinions with well intention, but aims at preventing the expression of hatred that stirs violence in the society.

113. The NCPO Order 7/2014 and the Head of NCPO Order 3/2015 share similar nature as they aim at maintaining peace, order and security necessary by restricting political gathering of more than five persons.

Covenant. Furthermore, the freedom of lawyers to take part in matters of public discussion has been limited since May 2014. Several public events organized by lawyers related to human rights were banned. This violates the right to freedom of expression as set out in Article 19 of the Covenant.

B No effective guarantees for the functioning of lawyers

19. L4L has been informed by lawyers in Thailand that they are regularly subjected to threats, intimidation and improper interference or attempts to put pressure on them by members of law enforcement agencies, the military and even the judiciary.

Several Thai lawyers reported to L4L that they frequently experience severe obstructions in their (court) cases. This practice is depriving them from proper representation of their clients in accordance with international standards, among which the right to fair trial. Examples of these obstructions are: the failure to provide an interpreter in the case of non-Thai speaking clients, denial of access to clients, court hearings of more than 12 hours and the refusal of access to evidence.

20. Lawyers do not always have the opportunity to meet with their clients in full confidentiality, which hinders them in exercising their professional duties.

Cases of Sor Rattabanee Polkaw

Ms. Polkaw is a human rights lawyer from the Community Resources Centre (CRC).

On 11 November 2014, a meeting took place between Ms. Polkaw and members of local communities in Udon Thani Province, North-Eastern Thailand. Ms. Polkaw visited the Udon Thani region for legal consultations with communities from eight provinces of the Mekong river basin. The meeting was interrupted by members of the military and the police.

Military offices were present when Ms. Polkaw arrived at the place of the meeting on 11 November 2014. They informed her that she is obliged to ask permission from the military authorities each time she plans to have such a meeting. Ms. Polkaw stated that she was planning to have legal consultations with community members, which is a legitimate activity for a lawyer, and that she had never previously heard that such meetings require special permission. The military forced her to sign a letter obliging her to seek permission for further meetings. The officers observed the rest of the meeting. Ms. Polkaw asked that same day for permission, and was granted this permission, but the military authorities remained present at the (private) consultations. The next day, on 12 November 2014, the legal

consultations continued and the military authorities once again attended the consultations.¹⁸

Another incident happened on 14 November 2016 when Ms. Polkaw represented KRBK community members at the Loey district Court to counter file a compensation suit against the gold-mining company TKL, following their previous court acquittal on a trespassing case. A community member who was in the lavatory adjacent the court corridor overheard an un-identified man talking with the court security guard. The un-identified man has allegedly been recognized as being an employee of the gold mining company. He approached the court security guards with questions about the identity of the lawyer and the members of the community and details about the court proceedings and their intentions. When approached, he covered his face and promptly left the premises.

Case of Sirikan Charoensiri

Ms. Sirikan Charoensiri is a human rights lawyer and member of the lawyers' collective Thai Lawyers for Human Rights (TLHR). On 26 June 2015, Thai police arrested 14 students after they carried out peaceful protests calling for democracy and an end to military rule. They were charged with violating an Order which bans gatherings of more than five people and sedition. Ms. Charoensiri provided legal aid to the 14 students at Bangkok's Phrarachawang Police Station and the Bangkok Military Court.

After representing the 14 students, the police requested to search Sirikan Charoensiri's car. She refused to consent to a warrantless search. Hereafter, the police impounded her car. When she went to the police station to file a complaint for malfeasance, the police refused to accept the complaint. In the meantime, another police team searched her car with a warrant. Five phones belonging to her clients were seized as evidence. When she tried to re-file a complaint, a senior investigator told her that the police had power to search her car and intimated that if she filed a complaint, the police would consider countering with some form of legal action against her.

On 28 June 2015, a senior police officer told the media that they had found "important evidence" in Ms. Charoensiri's car and considered charging her with a crime. One day after that, the police visited Ms. Charoensiri's family home and asked her parents to identify her in photos and questioned them about her background.¹⁹

21. Lawyers are even subjected to criminal investigations and criminal proceedings in connection to their legitimate activities.

¹⁸ <http://www.advocatenvooradvocaten.nl/9774/thailand-meeting-between-lawyer-and-local-communities-interrupted-by-military/>.

¹⁹ <http://www.advocatenvooradvocaten.nl/10895/thailand-lawyer-sirikan-charoensiri-harassed/>.

Case of Sirikan Charoensiri

On 2 February 2016, Ms. Charoensiri received a summons to appear at the Chanasongkram Police Station to be charged with two offences under the Criminal Code of Thailand: "giving false information regarding a criminal offence" and "refusing to comply with the order of an official." Almost eight months later, on 27 September 2016, Ms. Charoensiri received another summons to appear at the police station to be charged with violating a ban on political gathering of five persons or more under the Head of the NCPO Order 3/2015 and sedition under Section 116 of Thai Criminal Code. In nearly one year's time, Ms. Charoensiri has been charged with no fewer than four criminal offences in connection with her professional activities for taking on one human rights-related case. If indicted in the sedition case, Ms. Charoensiri will be required to appear before a military court. And if found guilty for all four above-mentioned charges, Ms. Charoensiri could face up to 15 years of imprisonment.²⁰

Case of Benjarat Meethien

Ms. Benjarat Meethien is a human rights lawyer working for TLHR and part of the legal team in two high profile cases: the 'Khon Kaen Model' case and the 'Bike for Dad' case. Ms. Meethien now faces criminal charges – brought by Maj Gen Wijarn Jodtaeng, the legal chief of the NCPO, and Col Burin Thongprapai, secretary of the legal chief of the NCPO – in apparent retaliation against her involvement in political cases.

The case against her relates to one of her clients, Mr Thanakrit Thongngernperm. Mr Thongngernperm is a defendant in the Khon Kaen Model case, but was subsequently accused of involvement in the Bike for Dad case, despite the fact that he was in detention in the Khon Kaen Central Prison at the relevant time. In response, on 29 November 2015, Ms. Meethien filed a report to the police alleging malfeasance, false reporting and falsifying evidence against Maj Gen Wijarn Jodtaeng, the legal chief of the NCPO, and Deputy National Police Chief Pol Gen Srivara Ransibrahmanakul. On 8 December 2015, Maj Gen Wijarn Jodtaeng and Col Burin Thongprapai retaliated by filing a complaint against Ms Meethien for criminal defamation and falsely reporting the case to the police. On 15 December 2015, Ms Meethien filed her own criminal defamation case with the Criminal Court, accusing Maj Gen Wijarn Jodtaeng and Pol Lt Col Mingmontree Siripong of criminal defamation by advertising and falsely reporting the case to the police.

On 28 January 2016, Ms. Meethien was formally charged by the Police's Crime Suppression Division in Chatuchak District with "giving false information regarding a criminal offence" (section 172, 173, 174 and 181 of the Criminal Code) and defamation (section 328 of the Criminal Code).²¹

²⁰ <http://www.advocatenvooradvocaten.nl/12005/thailand-charges-against-sirikan-charoensiri/>

²¹ <http://www.advocatenvooradvocaten.nl/11612/thailand-concerns-over-intimidation-lawyers/>

Case of Somchai Homlaor

Mr. Homlaor is a prominent Thai human rights lawyer who represents, among others, clients who are suspect of terrorism in the Deep South of Thailand and strives to prevent them from being tortured, disappeared or killed. Mr. Homlaor is affiliated with the Southern Thailand based Muslim Attorney Centre (MAC) and former Commissioner of the Law Reform Commission of Thailand.

On 17 May 2016, Thailand's Internal Security Operations Command (ISOC) Region 4 filed a criminal complaint in Pattani against Mr. Homlaor and two colleague human rights defenders. The criminal complaint accuses them of criminal defamation under the Criminal Code and spreading false information under the Computer Crimes Act. The charges are based on - and were laid after - the release of a report called 'Torture and ill treatment in the Deep South documented in 2014-2015', co-edited by the three. The report documents 54 cases in which Thai security personnel allegedly tortured and ill-treated ethnic Malay Muslim insurgent suspects in Thailand's Deep South between 2004 and 2015.

22. When lawyers are the subject of crimes, harassment or other violations, the Thai authorities do not always make sure that these violations are effectively investigated, publicly condemned at all levels and that the perpetrators of such acts are prosecuted. Failing to do so has a chilling effect on society as lawyers are unable to properly defend their clients, and may become reluctant to take on sensitive human rights cases.

Case of Somchai Neelapaijit

Somchai Neelapaijit was a lawyer of the Southern Thailand based Muslim Attorney Centre (MAC). He disappeared on 12 March 2004, one day after he had publicly accused the police of torturing his clients, who were in detention. Since then, nothing has been heard of him.

Shortly after the disappearance of Mr. Neelapaijit, five police officers were arrested and prosecuted for their alleged involvement in the disappearance. Although there seemed to be clear evidence against all five suspects, the court convicted only one officer to a three-year prison sentence in January 2006, acquitting the other four. National and international human rights organizations which observed the trial closely, believed that this verdict was the result of an utter failure of the judicial apparatus.

On 11 March 2011, the Appeals Court acquitted all five suspects. Furthermore, the court ruled that Mr. Neelapaijit's wife (Angkhana Neelapaijit) and children are not eligible to exercise his rights as a damaged party. On 24 November 2011, the Supreme Court accepted the appeal of Somchai's relatives against both the decision on his family's standing and the substantive issues in the case, requesting it to consider further evidence. Four years later, on 29 December 2015, the Supreme Court issued a verdict in which it denied the admission of crucial evidence and upheld the dismissal of the charge against

the five defendants as well as the acquittal of the motion of the joint-prosecutors to join cause with the prosecutor.²²

On 5 October 2016, the Department of Special Investigation (DSI) closed the investigation into Mr. Neelapaijit's disappearance on the grounds that no perpetrators and no new evidence had been found. This decision was taken in spite of the fact that under international human rights law, enforced disappearance is considered to be a continuing crime until the fate and whereabouts of a disappeared person are disclosed or otherwise become known.²³ On 3 November 2016, Angkhana Neelapaijit submitted a letter to the DSI to object against the decision to stop the investigation of the case.

C. Violations of the right to freedom of expression of lawyers

23. Lawyers, like any other individuals, have the right to freedom of expression. In particular, they have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.²⁴ This right is guaranteed under Article 19 of the International Covenant on Civil and Political Rights and Article 23 of the Basic Principles. Since May 2014, the right to freedom of expression and peaceful assembly have been restricted, including through the banning of public events related to human rights and democracy.

24. After the military coup on 22 May 2014, two educational events about human rights, organized by Thai Lawyers for Human Rights (TLHR), were cancelled by military forces. On 1 September 2014, a planned presentation of a report by TLHR on the situation of human rights in Thailand was cancelled by order of military officials. The report aimed to provide an overview of the obstacles to the access to justice in the aftermath of the coup in Thailand.

25. Furthermore, on 4 June 2015 the NCPO ordered to cancel a panel discussion, co-organized by TLHR, at the launch of a report on "Human Rights One Year After the 2014 Coup". Allegedly the police attended the premises of the event and handed over an official order instructing to stop the event.

IV Conclusions and recommendations

26. The Thai authorities do not always uphold the necessary guarantees for the proper functioning of the legal profession in practice. Lawyers are regularly subjected to threats, intimidation and improper interference or attempts to put pressure on them by members of law enforcement agencies or the military and even the judiciary. Some lawyers are even subjected to criminal proceedings, in connection

²² <http://www.advocatenvooradvocaten.nl/11444/thailand-12-years-since-disappearance-somchai-neelapaijit/>

²³ Article 17 of the Declaration on the Protection of all Persons from Enforced Disappearance, Adopted by General Assembly resolution 47/133 of 18 December 1992, Available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/EnforcedDisappearance.aspx>

²⁴ This follows from article 23 of the Basic Principles

to their legitimate professional activities. This violates the right to a fair trial as set out in Article 14 of the Covenant. Furthermore, the freedom of lawyers to take part in matters of public discussion has been limited since May 2014. Several public events organized by lawyers related to human rights were banned. This violates the right to freedom of expression as set out in Article 19 of the Covenant.

Recommendations

- 1. Thailand should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with Article 14 of the Covenant and Article 22 of the Basic Principles on the Role of Lawyers.**
- 2. Thailand should take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with Article 14 of the Covenant and Articles 16 and 18 of the Basic Principles on the Role of Lawyers.**
- 3. Thailand should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution or other sanctions on improper grounds, in accordance with Article 14 of the Covenant and Article 16 of the Basic Principles on the Role of Lawyers.**
- 4. Thailand should take measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in Article 19 of the ICCPR and Article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights.**