

Acting Sub Lt. Dr. Thawal Ruyaporn
President of the Lawyers Council of Thailand
Lawyers Council Under the Royal Patronage
249 Phahonyothin Rd,
Anusawari, Bang Khen,
Bangkok 10220
Thailand

1 February 2021

Dear President of the Lawyers Council of Thailand,

Re: Disbarment Proceedings Against Mr. Anon Nampha

Lawyers for Lawyers is an independent and non-political foundation that seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession.

International Commission of Jurists (ICJ), a global non-governmental organization composed of 60 eminent judges and lawyers, works to advance understanding and respect for rule of law as well as the legal protection of human rights throughout the world.

We write to your office concerning the disbarment proceeding against Mr. Anon Nampha, a lawyer and human rights defender, that is taking place before the Investigative Committee that was established by the Committee on Professional Ethics of the Lawyers Council of Thailand during the Meeting No. 1/2564 on 13 January 2021. We are concerned that the proceeding unduly interferes in his work as lawyer, including in representation of clients, and serves to impair the exercise of his human rights, including the right to freedom of expression.

According to our information, we understand that the proceeding against lawyer Anon Nampha is related to a complaint motion filed to the Lawyers Council of Thailand on 7 August 2020 by Mr. Aphiwat Khanthong, Assistant Minister in the Office of the Prime Minister, claiming to be acting in his capacity as a private attorney at Or Amporn Na Takua Tung and Friends Law Office. Mr. Aphiwat Khanthong alleged that lawyer Anon Nampha's behaviour violated the Lawyers Council of Thailand's disciplinary rules as, he claims, it would "*incite, intend to cause unrest, distort information and insult on the monarchy*". The alleged speech in question apparently called for reform of the monarchy, during a Harry Potter-themed protest at the Democracy Monument on Ratchadamnoen Avenue on 3 August 2020.

Under international law and standards, lawyers, like other individuals, enjoy the right to freedom of expression, belief, association and assembly. A lawyer should be able to draw the public's attention to issues relating to public affairs in their official capacity as well as in their private capacity. Suspensions or revocations of lawyer licenses as a result of exercise of their legitimate rights and

freedoms do not only impact on the exercise of the rights of the lawyers, but also on the rights of their clients to be represented by the lawyer of their choosing.¹

The right to freedom of expression is protected in international human rights law, including by article 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Thailand is a State party. In this respect, the UN Human Rights Committee, the body of experts mandated by the ICCPR to monitor its implementation, has affirmed in its General Comment No. 34 that protections for freedom of expression and opinion should extend to political discourse, commentary on public affairs, canvassing, and discussion of human rights.² In particular, the Committee has emphasized that:

“(...) concerning the content of political discourse, the Committee has observed that in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.”³

The UN Basic Principles on the Role of Lawyers specify that:

“Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall 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 and to join or form local, national or international organizations and attend their meetings without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.”⁴

The Basic Principles further state that, in exercising these rights, lawyers “shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.”⁵

¹ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, para 34, available at: <https://undocs.org/CCPR/C/GC/32>. See also: Principle 12 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, available at: https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

² Human Rights Committee, General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, para. 11, available at: <https://undocs.org/CCPR/C/GC/34>.

³ General Comment no 34, para 38.

⁴ Principle 23. The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 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. Available at: <https://www.un.org/ruleoflaw/files/UNBasicPrinciplesontheRoleofLawyers.pdf>

⁵ Ibid.

The Basic Principles also specify as follows:

“26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.”

In this connection, we note that, on 21 August 2020, Human Rights Lawyers Association (HRLA), Union for Civil Liberties (UCL), and at least 264 Thai lawyers, signed an open letter to the Lawyers Council of Thailand urging the dismissal of the motion of Mr. Aphiwat Khanthong because, *inter alia*, “none of the Regulation of the Lawyers Council on Conduct of Lawyers B.E. 2529 (1986) appears to support the reasons cited by Mr. Aphiwat Khanthong which may justify the debarment of Mr. Anon”.⁶

Furthermore, in 2014, the UN Special Rapporteur on the Independence of Judges and Lawyers expressed concern “at cases in which lawyers have been sanctioned because of political activities, advocacy work, confusion between the lawyer’s cause and his/her client’s cause, and involvement in the legal representation of clients in sensitive cases”. In that context, the Rapporteur urged States to, among other things, refrain from disbaring lawyers for the purposes of silencing them and preventing them from criticizing public policies.⁷ In a recent report on bar associations and other lawyers’ professional associations, the Rapporteur stressed the need for disciplinary proceedings to be independent, impartial, fair, and based on clearly established standards of conduct, noting among other things as follows:

“Disciplinary proceedings may represent a powerful weapon in the hands of Governments to interfere with the professional activities of lawyers, in particular those dealing with cases against the State or representing causes or clients that are unpopular with the existing regime.”

(...)

“Disbarment, which consists in taking away a lawyer’s licence to practise law, possibly for life, constitutes the ultimate sanction for the most serious violations of the code of ethics and

⁶ HRLA, An open letter urging the Lawyers Council of Thailand to dismiss Mr. Aphiwat Khanthong’s motion to debar Mr. Anon Nampha, 21 August 2020, available at: <https://naksit.net/2020/08/anon-nampa/>

⁷ Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/26/32, 28 April 2014, para. 68, available at: <https://undocs.org/A/HRC/26/32>

professional standards. Country reports show that, in many countries, lawyers are exposed to the threat of disbarment. Such threats aim at preventing the discharge of their professional duties or constitute an act of reprisal for activities carried out in the legitimate exercise of their responsibilities. The Special Rapporteur has stressed on a number of occasions that disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.”⁸

The Special Rapporteur accordingly expressed concern:

“(…) about the widespread use of disbarment as a measure to intimidate lawyers and prevent them from discharging their professional duties. Disbarment should only be imposed in the most serious cases of misconduct, as provided in the professional code of conduct, and only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer.”⁹

In view of the above, we, the undersigned organizations respectfully appeal to the Lawyers Council of Thailand to take into account and respect international law and internationally recognized principles on the role of lawyers, particularly the United Nations Basic Principles on the Role of Lawyers. Moreover, we urge the Lawyers Council of Thailand in its role as an independent legal institution to dismiss the complaint motion against lawyer Anon Nampha to protect his right to freedom of expression, and critically, the rights of his clients.

Thank you for your attention to this essential matter.

Yours sincerely,



Sophie de Graaf, *Executive Director*

Lawyers for Lawyers



Ian Seiderman, *Legal and Policy Director*

International Commission of Jurists

⁸ Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc A/73/365 (5 September 2018), paras 71 and 73, available at: <https://undocs.org/A/73/365>.

⁹ Ibid, para 115.