

Lack of necessary guarantees for the functioning of the legal profession in Thailand

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Summary

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 are free to carry out their professional duties independently of the government and political pressure.

Since second UPR cycle, the situation of lawyers in Thailand remains of concern. Thailand does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the United Nations Basic Principles on the Role of Lawyers. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This also undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

Difficulties with access to clients

During protests that took place from October 2020 to March 2021, many individuals were arrested and detained in a location hours away from Bangkok. When lawyers arrive at the location they often have to wait one to five hours before they can access their clients. Furthermore, law enforcement officers sometimes do not communicate the exact whereabouts of clients. As the clients sometimes don't know where they are being held themselves, it is nearly impossible to

request assistance of a lawyer. It was reported that officials sometimes communicate a location where clients are being held to their lawyers, and upon arrival the lawyer is informed that the client is transferred to another location, severely delaying the meeting between lawyer and client. ([L4L submission](#), §11, §12).

Lack of lawyer-client confidentiality

It is paramount that lawyers can consult and communicate with their clients in confidentiality. It has been reported that the lack of respect for lawyer-client confidentiality seriously impedes lawyers to properly exercise their function. It has been reported that when detained clients are meeting with their lawyer, officers sometimes stand in the corner of the room and will move closer to the lawyer and client in an attempt to monitor the lawyer and client, despite rebukes by the lawyer ([L4L submission](#), §14).

Harassment and intimidation of lawyers

Lawyers in Thailand are subjected to threats, intimidation, and improper interference or attempts to pressure them by members of law enforcement agencies, or the military. Some lawyers are the subject of criminal investigations and prosecution in connection to their legitimate activities. Impunity for the enforced disappearance of Thai human rights defenders, including lawyers, is still a major

concern. Also, Thai lawyers have been subjected to legal harassment based on acts performed in their professional capacity (L4L submission, §16, §17).

Threats to the Freedom of Expression for Lawyers

The freedom of expression that lawyers enjoy in connection to their professional functions should not only be guaranteed considering the rights of the lawyer, but also in protection of the rights of their clients. Some lawyers in Thailand have faced disciplinary proceedings in connection to them exercising their right to freedom of expression and assembly (L4L submission, § 20).

Threats to the Independence of the Bar Association

Professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from prosecution and improper restrictions and infringements, providing legal services to all in need of them.

According to our information, the Lawyers Council of Thailand has not always provided adequate protections for Thai (human rights) lawyers, when their rights and privileges are not being respected. The Lawyers Council must take into account and respect international law and internationally recognized principles on the role of lawyers. Moreover, its role as an independent legal institution should be at the forefront as there is a strong need in the Thai legal community for disciplinary proceedings to be independent, impartial, fair, and based on clearly established standards of conduct (L4L submission, § 21, §22).

Lawyers for Lawyers (L4L is an independent, non-political and not-for-profit lawyers' organization established in 1986. Our mission is to promote the independent functioning of lawyers and the legal profession across the world in accordance with internationally recognized norms and standards, including the Basic Principles on the Role of Lawyers. Our work to support lawyers who are at risk as a result of discharging their professional duties, seeks to protect them from threats, risks and reprisals, strengthens their international recognition and protection in laws, policies and practices, and empower them to fulfil their role as essential agents of the administration of Justice. Lawyers for Lawyers was granted special consultative status with the UN Economic and Social Council in July 2013.

Recommendations

- Take immediate measures to ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity.
- Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their criminal prosecution on improper grounds such as the expression of critical views or the nature of the cases that the lawyer is involved in.
- Take immediate measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 23 of the Basic Principles, 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, without suffering professional restrictions by reason of their lawful action.
- Take immediate measures to guarantee that the Lawyers Council of Thailand can play their vital role in protecting their members from persecution and improper restrictions and infringements.