

A. Introduction

1. Lawyers for Lawyers (hereinafter 'L4L') submits this report on the state of human rights, especially in respect of the legal profession, in Thailand, with recommendations to the OHCHR for the 25th session of the UPR Working Group in the UN Human Rights Council in April/May 2016.
2. L4L is an independent and non-political, Netherlands foundation, which was established in 1986 and is funded by lawyers' donations. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession around the world and has special consultative status with ECOSOC since 2013.

B. Executive Summary

3. This submission highlights L4L's key concerns regarding Thailand's compliance with its international and national human rights commitments to guarantee the right to independent counsel as set out in the UN Basic Principles on the Role of Lawyers¹ ('Basic Principles') and other international human rights instruments, focusing on two main themes: the lack of (i) effective guarantees for the functioning of lawyers and (ii) freedom of expression and association of lawyers. Non-compliance with the Basic Principles undermines the proper functioning of the judicial system and the right to fair trial in particular.
4. Recommendations to the government:

Regarding (i) the lack of effective guarantees for the functioning of lawyers:

- (a) to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;
- (b) to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted;
- (c) to provide lawyers with all the facilities, rights and privileges necessary for discharging their functions, including the right to consult and communicate with their clients freely and in full confidentiality, in accordance with articles 16(b), 21 and 22 of the Basic Principles;

Regarding (ii) the lack of freedom of expression and association of lawyers:

- (d) to ensure the freedom of expression, association and assembly of lawyers;
- (e) to respect the right of lawyers 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,

¹ 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.

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.

C. Normative and institutional framework of the State

5. Thailand is a party to the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These international agreements stipulate the adequate protection of human rights and fundamental freedoms, which 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 free to carry out their professional duties independently.
6. Furthermore, on 30 June 2015, the Human Rights Council passed a unanimous resolution condemning in general “*the increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions*”. The Human Rights Council reminded 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*”.²
7. In its task of promoting and ensuring the proper role of lawyers, the Thai government should respect and take into account the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to justice.
8. Reports gathered by L4L and information that we received from lawyers in Thailand, demonstrate that Thailand does not always uphold the necessary guarantees for the proper functioning of the legal profession as set out in, *inter alia*, the Basic Principles. As a consequence, lawyers encounter difficulties in carrying out their profession independently. This also undermines the proper functioning of the judicial system, including the right to fair trial.

D. Promotion and protection of human rights

(i) No effective guarantees for the functioning of lawyers³

9. 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 or the military. This is illustrated by the following case:

Case of Sirikan Charoensiri

On June 26, 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

² 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://daccess-dds-ny.un.org/doc/UNDOC/LTD/G15/138/47/PDF/G1513847.pdf?OpenElement>.

³ Basic Principles on the Role of Lawyers, principles 16, 17, 18, 19, 20, 21, 22.

which bans gatherings of more than five people and sedition. Ms. Sirikan Charoensiri, working for an organization called Thai Lawyers for Human Rights (TLHR), 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 are considering to charge 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.⁴

10. When lawyers are the subject of crimes, harassment or other violations, the Thai authorities should, according to *inter alia* the Basic Principles, make sure that these violations are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted. However, the following case demonstrates that the Thai authorities have failed to address⁵ the impunity of crimes that human rights lawyers are subjected to:

Case of Somchai Neelapaijit

Somchai Neelepaijit 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 Somchai, 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 Somchai's wife (Angkhana Neelapaijit) and children are not eligible to exercise his rights as a damaged party, thereby shutting the door for Somchai's family to uncover the truth and to seek justice in court.

On 10 May 2011, Angkhana Neelapaijit appealed to the Supreme Court both the decision on her family's standing and the substantive issues in the case, requesting it to consider further evidence. On 21 May 2014, the Supreme Court of Thailand denied the admission of crucial evidence in the case. This decision essentially shuts down this phase of the 10-year-old case.⁶

11. The Basic Principles provide that "governments shall ensure that lawyers are able to travel and to consult with their clients freely both within their own country and abroad", and "governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential".⁷ However, lawyers in Thailand often don't have the opportunity to meet with their clients in full confidentiality, which hinders them in exercising their professional duties. This is illustrated by the following case:

⁴ <http://www.advocatenvooradvocaten.nl/10895/thailand-lawyer-sirikan-charoensiri-harassed/>.

⁵ In May 2008, the Thai authorities pledged before the Human Rights Council that it would do "its utmost and leave no stone unturned in order to bring to justice the case of Mr. Somchai". Furthermore, in April 2014, the Thai authorities gave assurances in a statement to the Convention Against Torture Committee in Geneva in April 2014, that the Department of Special Investigations (DSI) was continuing to investigate Somchai Neelapaijit's case without any interference.

⁶ <http://www.advocatenvooradvocaten.nl/9276/thailand-rejection-of-evidence-in-case-somchai-neelapaijit/>.

⁷ Basic Principles on the Role of Lawyers, principles 16 and 22.

Case of Sor Rattabanee Polkaw

On 11 November 2014, a meeting between lawyer Sor Rattabanee Polkaw and members of local communities in Udon Thani Province, North-Eastern Thailand, was interrupted by members of the military and the police.

Ms. Polkaw is a human rights lawyer from the Community Resources Centre (CRC), and visited the Udon Thani region for legal consultations with communities from eight provinces of the Mekong river basin.

When Ms. Polkaw arrived at the place of the meeting on 11 November 2014, she saw that the military were present and she enquired about their reasons for being there. The officers responded that they were aware of a meeting that was planned with a lawyer and 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.⁸

12. Recommendations to the Thai government:

- (a) to take all measures necessary to prevent that lawyers are threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16(a) of the Basic Principles;**
- (b) to take all measures necessary to ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted;**
- (c) to provide lawyers with all the facilities, rights and privileges necessary for discharging their functions, including the right to consult and communicate with their clients freely and in full confidentiality and to have access to information, files and documents at the earliest appropriate time, in accordance with articles 16(b), 21 and 22 of the Basic Principles;**

(ii) [No freedom of expression and association of lawyers](#)⁹

13. In May 2014, the Thai army imposed martial law in Thailand. On 1 April 2015, Thailand's martial law was revoked and the Head of National Council for Peace and Order (NCPO) issued an Order (No. 3/2558), which explicitly grants expanded powers to military personnel to act as police investigators or inquiry officers under criminal procedure code. "Peace and Order Maintenance Officers" (POM Officers: military personnel, appointed by the NCPO to execute this Order) are since then granted to act as police investigators or inquiry officers in cases related to offences against monarchy, offences against national security, offences related to ammunition, weapons and arms, and offences as provided by NCPO's Announcements and Orders. All actions and performances carried out in accordance with this Order are assumed to be legal, constitutional and conclusive according to Article 44 of the Interim Constitution.

14. L4L is concerned about the adoption and execution of Order No. 3/2558. The pattern of arrests and prosecutions indicates that criticism of the NCPO, distribution of information, participation in public gatherings and participation in

⁸ <http://www.advocatenvooradvocaten.nl/9774/thailand-meeting-between-lawyer-and-local-communities-interrupted-by-military/>.

⁹ Basic Principles on the Role of Lawyers, principle 23.

public debate about issues of concern are considered threats to national security. Military forces even have cancelled educational events about human rights in Thailand on at least two occasions (including 4 June 2015), organized by Thai Lawyers for Human Rights .¹⁰ The freedom of expression of Thai lawyers is clearly at stake, as also illustrated by the following case:

Case of Anon Nampa

*Anon Nampa is a human rights defender who was arrested on 14 February 2015, along with three anti-coup activists, on charges of violating NCPO's Order, which prohibits public gatherings of more than five people. The four were arrested while they were in the process of organizing an event to mark the one-year anniversary of the annulled Thai general election in February 2014. All four human rights defenders were released on bail one day later after being detained and interrogated for more than nine hours.*¹¹

While he was in police custody, Anon posted five messages on Facebook. In the messages, Anon criticized the role of the military in the administration of justice under martial law. For that reason, he was later accused of "importing into a computer false information which may damage national security" under Article 14(2) of the Computer Crimes Act. If prosecuted and found guilty, Anon faces up to 25 years in jail and a fine of up to 500,000 Thai baht (approximately 14,135 Euros).

The Basic Principles provide 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. [...]"¹² As described above, lawyers in Thailand are in practice being restricted by the NCPO's Order No 3/2558 in their lawful and responsible duties.

15. Recommendations to the Thai government:

- (d) to ensure the freedom of expression, association and assembly of lawyers;**
- (e) to respect the right of lawyers 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.**

¹⁰ <http://www.lrwc.org/thailand-military-government-shuts-down-lawyers-human-rights-education-event-statement/>.

¹¹ <http://www.advocatenvooradvocaten.nl/10462/thailand-judicial-harassment-against-lawyer-anon-nampa/>.

¹² Basic Principles on the Role of Lawyers, principle 23.