

Criminal Court

22 May 2015

Plaintiffs: A total of fifteen plaintiffs, with Mr. Pansak Srithep as Plaintiff No.1; Mr. Anon Numpa is acting on behalf of all plaintiffs.

Defendants: A total of five defendants, with General Prayuth Chan-ocha as Defendant No. 1.

Accused Crime: Offences against state security

1. At the time of the incident, Thailand was a parliamentary democracy with a constitutional monarch. The 2007 Constitution was the highest law in the land. In line with the constitutional stipulation that the sovereign power belonging to the Thai people, a cabinet exercised administrative power and governed the country on their behalf. A parliament enacted laws and audited the governance of the country on behalf of the Thai people. Courts exercised judicial power to rule and decide on cases on behalf of the Thai people. As the owners of sovereignty, the people also possessed rights, freedom and participated in governance.

Plaintiff Nos. 1-15 are Thai people and the owners of sovereignty. They possess rights, freedom and human dignity. According to the constitution, it is their duty to protect the nation, religion, king, and governance by democracy with the king as head of state. This includes the right to peacefully oppose any actions undertaken to obtain the administrative power of the nation through unconstitutional means as stipulated in Articles 69 and 70 of the 2007 Constitution.

Plaintiff Nos. 1-14 authorize Mr. Anon Numpa, age 30, who resides at 51 Moo 9, Ma Ba sub-district, Thung Khao Luang district, Roi Et province, to bring the case on their behalf. The details are in authorization documents Nos. 1-4 appended here.<sup>1</sup>

At the time of the incident, Defendant No. 1 was a civil servant and held the position of commander of the army. Prior to this, on 19 September 2006, Defendant No. 1, who was then deputy commander of Army Region 1, joined with the junta in the name of the Council for Democratic Reform under Constitutional Monarchy (CDRM) led by General Sondhi Boonyaratglin to foment a coup to seize the administrative power of the country from the Thai Rak Thai party, which was a government that was elected by the people in accordance with the 1997 Constitution. Subsequently, the junta announced the abrogation of the 1997 Constitution. They ordered the dissolution of the cabinet and parliament. They ruled the country as a dictatorship and promulgated the 2006 (Interim) Constitution. The junta appointed General Surayud Chulanont, privy councilor, as prime minister and exercised dictatorial power to appoint an interim parliament. They also appointed a group of people to draft a constitution, on which a referendum was held on 19 August 2007. At that time, 25,978,954 people voted out of a total of 45,092,955, or 57.61% of those eligible. There were 14,727,396 votes in support and 10,747,441 votes against. The constitution was promulgated on 24 August 2007. After the coup, Defendant No. 1, as a participant in the coup on 19 September 2006, was appointed as a member of

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<sup>1</sup> The documents appended to the Thai-language complaint are not included in this translation.—*trans.*

the National Legislative Assembly. He became commander of Army Region 1 on 1 October 2006. He then became assistant commander of the army on 1 October 2009.

Subsequently, in 2010, under the rule of Abhisit Vejjajiva, then prime minister, there was a political demonstration of the United Front for Democracy Against Dictatorship (UDD) in Bangkok and the provinces. The Abhisit Vejjajiva government enacted the use of the Internal Security Act of 2008, and then the Emergency Decree on Public Administration in State of Emergency of 2005. Defendant No. 1, who was then the assistant commander of the army, served as the assistant commander of the Center for the Resolution of the Emergency Situation (CRES). He participated in ordering and commanding soldiers to disperse the protestors assembled in the areas of Ratchadamnoen Road and Ratchaprasong Intersection in Bangkok. This resulted in the deaths of more than 100 people and a large number of injuries. At present, this case is at the stage of court inquests into the deaths. Subsequently, Defendant No. 1 was promoted to commander of the army, a position he held until the incident in this case arose. At present, he is the Head of the National Council for Peace and Order (NCPO) and is the prime minister, who came to power following collaboration with Defendant Nos. 2 to 5 to foment the coup as accused in this case.

Defendant No. 2 was commander of the navy at the time of the incident. After participating in the coup, he held the positions of deputy head of the NCPO and minister of communication.

Defendant No. 3 was commander of the air force at the time of the incident. After participating in the coup, he held the positions of deputy head of the NCPO and minister of education.

Defendant No. 4 was commander of the police at the time of the incident. After participating in the coup, he held the positions of deputy head of the NCPO and minister of social development and human security.

Defendant No. 5 was supreme commander of the armed forces at the time of the incident. After participating in the coup, he held the positions of deputy head of the NCPO, deputy prime minister and minister of foreign affairs.

2. Between 20 and 24 May, across day and night, the five defendants as well as military and civilian individuals not accused in this case by the plaintiffs, dared to enact martial law across the country without a reason in line with Article 2 of the Martial Law Act of 1914. Defendant No. 1 claimed that he himself had the authority to do so according to Articles 2 and 4 of the Act. Then, Defendant No. 1 gave orders for armed soldiers to take control of television, radio and all forms of broadcast media; to establish bunkers around government buildings; and engaged in various preparations to use or threaten to use injurious force. This was part of fomenting a coup, engaging in rebellion, and treasonous conspiracy. The actions of Defendant No. 1 were in contravention to the Martial Law Act of 1914 and the 2007 Constitution.

Then, on 22 May 2014, across day and night, the five defendants and their clique dared to summon the leaders of the caretaker government, representatives from political parties and political groups including the UDD and the People's Democratic Reform Committee (PDRC) to the Royal Thai Army Club on Vibhavadi Rangsit Road in Bangkok and claimed that it was a meeting to find a solution for the country. This meeting was part of the plan to seize administrative power from the caretaker

government. The five defendants and their clique had met previously. At the same time as the meeting, the five defendants and their clique brought military forces armed with war weapons under their command to seize government offices, such as the prime minister's office, the Ministry of Defence, the Public Relations Department Radio Station, and every government and private television station. Their actions included others, such as arresting a large number of people and politicians, including representatives from political parties and groups including the UDD and PDRC. The five defendants and their clique used force to detain and not allow the aforementioned representatives to leave the meeting room at the Royal Thai Army Club on Vibhavadi Rangsit Road in Bangkok. This was the use of injurious force. At 16.40, the five defendants and their clique dared to use and threaten the aforementioned injurious force to foment a coup and announce that they had seized the administrative power from the government elected according to the 2007 Constitution. They announced that the 2007 Constitution, the cabinet and the senate were void. This was all detailed in NCPO Announcements No. 1, 5, and 11, appended as Document Nos. 15-18.

The actions of the five defendants and their clique were therefore collaboration to overthrow parliamentary democracy. They obtained the administrative power of the country in a manner that was in contravention to the 2007 Constitution. It was the use or threat of injurious force in order to subvert or change the constitution and overthrow the constitutional legislative, administrative and judicial powers. This was treason.

3. The actions of the five defendants and their clique described in 2) above is the reason why the fifteen plaintiffs have suffered damages. The 2007 Constitution was still in force when the incident occurred. Therefore, the fifteen plaintiffs in this case, who were Thai citizens under that constitution, had constitutionally-protected rights and liberties. In other words, they had liberty of life, body, and movement and had the freedom to choose their location, freedom to express their opinions, publish and disseminate information, of association, and political assembly, etc. The five defendants and their clique used injurious force to subvert and change the 2007 Constitution, to overthrow the individuals who used sovereign authority on behalf of the fifteen plaintiffs, namely the cabinet that exercised administrative power, the members of parliament who exercised legislative power, and including the destruction of judicial power by promulgating announcements that civilians with political cases arising from conflict with the five defendants and their clique must be adjudicated in the military court as detailed in NCPO Announcement Nos. 37 and 38, appended as Document Nos. 19 and 20.

In addition, the five defendants and their clique collaborated to issue many illegal announcements and orders. This caused the fifteen plaintiffs to be dispossessed of their rights and freedom. In particular, the announcements and orders of the NCPO as well as the actions of the five defendants and their clique resulted in the fifteen plaintiffs suffering damages as described below:

- 3.1 Plaintiff No. 1 is a taxi driver, a member of Resistant Citizen, and the father of a person who lost his life during the dispersal of political demonstrations in 2010. His existing freedoms were restricted after the five defendants and their clique fomented the coup. He was unable to live his life as usual due to the restrictions on rights and freedoms by the junta led by the five defendants and their clique. He was prosecuted in the military court as a result of his sincere expression under NCPO Announcement

Nos. 7, 37, and 38; Article 116 of the Criminal Code; and the Computer Crimes Act of 2007.

3.2 Plaintiff No. 2 is a taxi driver and a member of Resistant Citizen. His existing freedoms were restricted after the five defendants and their clique fomented the coup. He was unable to live his life as usual due to the restrictions on rights and freedoms by the junta led by the five defendants and their clique. He was prosecuted in the military court as a result of his sincere expression under NCPO Announcement Nos. 7, 37 and 38.

3.3 Plaintiff No. 3 is a student at Thammasat University and a member of Resistant Citizen. Plaintiff No. 3 was dispossessed of his freedom of political expression after the five defendants and their clique fomented the coup. Plaintiff No. 3 was forbidden from doing eating sandwiches as activism, making the three-finger salute and from organizing academic seminars and engaging in other forms of political expression. He was prosecuted in the military court for his sincere expression under NCPO Announcement Nos. 7, 37, 38 and 39.

3.4 Plaintiff No. 4 is a labor leader and a committee member of a union in Rangsit and neighboring areas. Following the coup, her freedom of assembly to protest, an existing freedom she had to call for fairness from bosses in hiring and working, was restricted. This resulted in her being unable to exercise her freedom of political expression, academic freedom, and political demonstration in line with her status and rights as a citizen.

3.5 Plaintiff No. 5 is an employee of a nongovernmental organization. He has the duty to provide knowledge and aid villagers in the management of natural resources. Following the coup, Plaintiff No. 5 was unable to call meetings or demonstrations to make demands about the unfair treatment of the villagers. He was unable to exercise his freedom of political expression, academic freedom, and political demonstration in line with his status and rights as a citizen.

3.6 Plaintiff No. 6 is the younger brother of a person who lost her life in the dispersal of political demonstrations in May 2010. On 22 May 2014, the day of the coup, Plaintiff No. 6 was arrested on Aksa Road by soldiers under the command of the five defendants. He was detained in a military camp and deprived of his rights to communication, assembly and political expression. These were rights that Plaintiff No. 6 held previously.

3.7 Plaintiff No. 7 was summoned to report himself to the NCPO under NCPO Order No. 44 after the five defendants and their clique fomented the coup. He was detained under the Martial Law Act of 1912, which was illegitimately and undemocratically decreed for use by Defendant No. 1. He underwent prosecution under NCPO Announcement No. 44 for resisting the junta and was criminally prosecuted according to Article 112 of the Criminal Code. These cases are being adjudicated in the military court under NCPO Announcement Nos. 37 and 38. He was denied temporary release on bail and remains held in the Bangkok Remand Prison at present.

3.8 Plaintiff No. 8 was arrested under the Martial Law Act of 1912, which was decreed by Defendant No. 1 and his clique. In addition, Defendant No. 8 was tortured by using electric shock on his thighs and stomach. His suffering was a violation of his freedom of person. His case is being adjudicated in the military court under NCPO Announcement Nos. 37 and 38. He was denied temporary release on bail and remains held in the Bangkok Remand Prison at present.

3.9 Plaintiff Nos. 9 to 14 are university students who were threatened by all five defendants and their clique and also those under the command of the five defendants. They were threatened and forced to agree to a memorandum of understanding upon release from detention as individuals who reported themselves to the NCPO. This was a deprivation of their rights and freedom. Their detention arose from their political expression of disagreement and opposition to the coup by the five defendants and their clique. They were forbidden from political expression including the three-finger salute, eating sandwiches, and other student activism.

3.10 Plaintiff No. 15 is a human rights lawyer.

His existing freedoms were restricted after the five defendants and their clique fomented the coup. He was unable to live his life as usual due to the restrictions on rights and freedoms by the junta led by the five defendants and their clique. He was prosecuted in the military court as a result of his sincere expression under NCPO Announcement Nos. 7, 37, and 38; and the Computer Crimes Act of 2007.

The fifteen plaintiffs are therefore injured parties and have sustained harm that directly resulted from the coup fomented by the five defendants and their clique. They carried out the crime of preparation to carry out treason according to Article 114 of the Criminal Code and the crime of rebellion according to Article 113 of the Criminal Code. These are laws that are intended to protect the interest of the state as well as the individuals who directly sustain injury from the crimes. This means that according to Article 2 (4) of the Criminal Procedure Code, the fifteen plaintiffs are directly-injured parties and therefore have the authority to bring a complaint against the five defendants and their clique. Their actions dispossessed the fifteen plaintiffs and the people writ large of their constitutionally-provided sovereignty.

The fifteen plaintiffs would like to inform the court that this is a case of a crime that directly harmed all of the people and citizens. If the state was the only injured party, then it would make it impossible to enforce the crime of rebellion. After the junta fomented the rebellion, those who exercised the sovereignty of the people, including that of the fifteen plaintiffs, namely the cabinet and members of parliament, were scared of the junta's authority and yielded fully to them. Even the civil servants, whose salary comes from the taxes of the people, were not courageous enough to stand up to the power that emerged from the barrel of a gun. It was only the people, the citizens, who dared to courageously rise up to oppose the dictatorial power of the junta, as has been seen from the past until the present. For this reason, the fifteen plaintiffs have therefore brought this complaint in order to bring the crimes of the five defendants and their clique to the court of justice, which is the sole sovereign power that is steadfastly impartial at this time when the country is dark and bereft of hope in the present.

4. After the five defendants and their clique dared to cooperate to commit the crimes described in 2) above, the defendants then still issued announcements and orders in the name of the NCPO. These announcements and orders violated the important core of the rights and liberties of the people. For example, it was forbidden for the people to hold political demonstrations. The NCPO shut down the operations of many mass media outlets and forbade the mass media from reporting analysis or criticism of the NCPO; the mass media were also forbidden from interviewing academics or inviting them to join television programs. Orders were used to forbid the organizing of academic seminars and activities inside and outside the university. Orders were issued summoning people to

report themselves to the NCPO. People who were suspected of being involved in politics were arrested and detained under martial law and some were accused of violations of the law which carried criminal punishment. Some of those who were detained were tortured. Villagers living in forest areas covered by the Army's Forestry Master Plan were threatened, subject to search and arbitrary arrest, and displaced. The announcements that people who did not act in accordance with NCPO orders would be criminally charged and the placement of criminal cases related to politics within the jurisdiction of the military court were in contravention to principles of human rights and democracy.

In addition to the use of the junta's authority to violate the people's human rights, the five defendants and their clique further cooperated to govern the country in a damaging manner. They squandered the budget for procurement in many doubtful projects. They began a new era of totalitarian dictatorship. They appointed individuals who agreed with them, including their family and friends, to share in power. The five defendants and their clique exercised power without the right to represent the Thai people. For example, they appointed a group of individuals to exercise legislative power in the names of the National Legislative Assembly (NLA) and the National Reform Assembly in contravention to democratic governance. They appointed their friends to the boards of directors of state organizations and state enterprises as if to divide the spoils of the coup without any fear of the law or shame in front of the people. Those appointed by the five defendants and their clique were unashamed. They then appointed their friends and families to positions for which they were responsible and nefariously seized the profits which belonged to the state

The actions of the five defendants and their clique therefore constitute the subversion of the country and have caused the unending deterioration of the economy, society, politics, and rights and liberties of the people. This has impacted and harmed the fifteen plaintiffs and all ordinary people. There are no indications that the five defendants and their clique will cease the aforementioned actions. Rather, they continue to exercise unbounded power through Article 44 of the 2014 (Interim) Constitution, which the junta drafted with the intention of using as an instrument to rule the nation as a totalitarian military dictatorship. At the time this case is being brought, the five defendants and their clique are drafting an undemocratic constitution in order for the country to come to be governed by an elite who are uninterested in the people. Therefore, if the five defendants are allowed to continue to exercise the authority they gained through the coup, it is likely to create a certain disaster for the Thai people and Thailand.

5. The fifteen plaintiffs would like to inform the court that "sovereignty" belongs to all Thai people. Judicial power is one part of the sovereignty of the people. Therefore, the examination and judgment of cases must draw on this aforementioned power in the service of the people. Adjudication of cases must expand the arena of the protection of the rights and freedoms of the people and protect and preserve democracy. If the judicial power does not serve the people and instead yields to the authority of the junta, whose rule has legally illegitimate origins, this will challenge and destabilize the law and the judicial process. In addition, judicial power should have a role in the preservation of the legitimacy of law, including the law's obligation to safeguard democracy.

The fifteen plaintiffs would like to inform the court that the fomenting of a coup is a treasonous offence and the five defendants and their clique should not be able to arbitrarily call themselves the "sovereign." No one should be willing to bow

before the five defendants and their clique. In a democratic system, the “sovereign” refers to the people who are the owners of sovereignty. This sovereignty is exercised through the legislative, administrative and judicial organizations. The seizing of power in the coup was merely the seizing of power of those who exercise sovereignty. The five defendants and their clique were not able to seize the sovereign power that belongs to the people. The people always remain the sovereign and the owners of sovereignty. The judicial organization, which exercises sovereign power in the stead of the people who are the owners of sovereignty, must firmly protect human rights and freedoms. The government must be constructed by exercising authority that comes from concern for those who are under its rule. When a form of government that destroys these goals arises, such as the seizure of power in a coup by a junta who do have consent from the majority of the people in the country, then it is the right of the people to refuse, not accept, or abolish that government. This is a universal principle of natural justice. If the judiciary accepts the junta as the sovereign, it will promote the repetition of a vicious cycle of coups and will create an opening for those who foment a coup to become the sovereign. The judiciary must exercise their authority to rule and judge to make the junta accept punishment according to the law in order to preserve justice, maintain the democratic system, and protect the people as the true owners of sovereignty. If the judiciary accepts the authority of those who launch a coup as the sovereign, it is equivalent to the judiciary not serving the people and instead serving illegitimate power that is indifferent to the safeguarding of democracy.

6. The fifteen plaintiffs would like to inform the court that the fomenting of the coup, including the exercise of administrative power, by the NCPO is a violation of Article 113 of the Criminal Code and resulted in wide-ranging harm to the people as described in this complaint. The NCPO’s enactment of Articles 47 and 48 in the 2014 (Interim) Constitution in order to amnesty the coup and the actions in the form of the announcements and orders of the NCPO was an enacting of law to make legal and constitutional the exercise of power that is in contravention to democracy and a violation of the law. Therefore, Articles 47 and 48 of the 2014 (Interim) Constitution are regulations that are in stark conflict with the voice of conscience and the fundamental principles of human justice. They are not law in any way; law must be based in thought and related to and in the service of justice. Law does not exist alone or without relation to values. Therefore, the five defendants and their clique are unable to cite Articles 47 and 48 of the 2014 (Interim) Constitution as a reason for exemption from the crime of fomenting a coup and an internal rebellion.

The fifteen plaintiffs would like to inform the court that the interpretation of the constitution must be in relation to the law and various values in order to facilitate justice. These values include the voice of conscience of the fundamental principles of justice. Otherwise, the prosecution of a case in the name of the “judicial process” in a court will be meaningless. If the court interprets the constitution by merely adhering to the words that those who hold power drafted by overlooking the voice of conscience and the fundamental principles of justice, the court will be unable to act according to the principles of justice. If the judges use the aforementioned regulations or accept their effect, it is equivalent to the court deciding the case according to junta-stipulated “injustice” rather than “justice.” This will promote additional coups and the violation of the law.

The fifteen plaintiffs are citizens of Thailand. They possess human dignity and human rights and were robbed of the sovereignty that belonged to us and all Thai people under the 2007 Constitution. Their rights were violated and they are both de facto and de jure injured parties from the actions of the five defendants and their clique. Therefore, they have come together to submit a complaint to prosecute the five defendants in court with the intention to hold the five defendants and their clique to account. The five defendants and their clique dared to cooperate and commit the crime of treason against the nation and betrayal of the people who are the owners of state power. The fifteen plaintiffs cannot prosecute a case against the five defendants and their clique directly and therefore hope that the court of justice will itself bring the case. They ask the court to please issue an order to summon the five defendants for examination of the crimes and to judge and punish the five defendants according to the law. They request a heavy punishment in order to create a norm and a guarantee for society that this will not occur again.

This incident in this case took place in Phranakorn, Bang Sue and Chatuchak districts in Bangkok and every province in Thailand.