



Thai Lawyers for Human Rights

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Press Release on the Detention of Political Critics in Thailand

The military officials have held in custody Mr. Pichai Nariphaphan on 8 September 2015, and Mr. Karoon Hosakul on 10 September 2015. To this, Gen. Prayut Chan-ocha, Head of the National Council for Peace and Order (NCPO), told the press that the detention of the two persons was relating to their outspoken critique of the government's performance. Of late, a senior reporter of *The Nation*, Mr. Pravit Rojanaphruk, has been deprived of his liberty as well on 13 September 2015.

The Thai Lawyers for Human Rights (TLHR) have the following legal opinions to make regarding the exercise of such power;

1. Though Martial Law has been lifted nationwide since 1 April 2015, and as a result, the military officials are not authorized to invoke the law to hold a person in custody. But on the same day, the Head of the National Council for Peace and Order (NCPO) invoked his power vested in Section 44 of the 2014 Interim Constitution to issue the Head of the National Council for Peace and Order (NCPO)'s Order no. 3/2558 authorizing military officials or any persons designated as Peace and Order Maintenance Officials to summon a person to ask question or to acquire evidence and the person can be held in custody for up to seven days without having to seek judicial order. It is claimed the authorization is aimed at preventing and preempting any act against the monarchy, the offence against national security, the offence against laws concerning firearms and the offence relating to the violation of Announcements or Orders issued by the NCPO. However, political criticisms or criticisms of the performance of the government are simply an exercise of the right to freedom of expression and opinion in a democratic rule since every government is subject to accountability and criticisms. Therefore, such exercise of the right shall not be a cause for the Peace and Order Maintenance Officials to invoke their power to summon a person to give evidence or to hold the person in custody.

In addition, Section 44 of the 2014 Interim Constitution which provides legal foundation for the Head of NCPO's Order no. 3/2558 regarding the maintenance of public order and national security and the provision which

exempt either the Head of the NCPO or the officials carried out duties by the order of the Head of the NCPO from any liability, is in fact a breach of international human rights obligations including those enshrined in the International Covenant on Civil and Political Rights (ICCPR) to which Thailand is a state party. It also quashes one of the most fundamental principles of the rule of law relating particularly to legal liability. The exercise of power and the performance of duties of the officials at the Head of the NCPO's Order no. 3/2558 has to rest under a legal framework and should be subjected to accountability by various other mechanisms including the judiciary, a very important organ to ensure checks and balances and the upholding of civil rights and liberties.

2. Even though the ruling of the country by NCPO has been made possible by its seizure of power, but NCPO has promulgated the 2014 Interim Constitution and its Section 4 provides for the protection of the rights and liberties of Thailand people as stipulated in international human rights treaties to which Thailand is a state party. Therefore, the right to freedom of expression as enshrined in Article 19 of the ICCPR which enables a person to criticize in good faith political issues and the performance of the government should also be upheld according to the Constitution and the ICCPR.

TLHR has found the exercise of power by the officials invoking the power as per the Head of the NCPO's Order to summon a person, claimed to have a talk or to adjust their attitude, and to hold a person in custody for questioning up to seven days simply because of their dissenting political views an act to deprive a person of their rights and liberties disproportionately and unnecessarily. In many instances, the military officials have approached the person without identifying themselves, without telling their names, positions, or affiliated agencies, without disclosing detail of the detention facilities, disallowing visit by their relatives or confidante, and denying them their access to legal counsel, even though the person has not been charged as an alleged offender. That their fate has been made unknown makes them susceptible to gross human rights violations including torture and enforced disappearance. Therefore, such deprivation of liberty cannot be justified as lawful and is in breach of Article 9 of the ICCPR.

If a person is believed to have been held in custody unlawfully, either a public prosecutor or a concerned person is able to submit a request to the Court asking for a hearing on the alleged unlawful custody invoking Article 90 of the Criminal Procedure Code of Thailand. This legal provision is compatible with the habeas corpus right enshrined in international human rights laws which authorize a person to ask for a judicial review should a person be believed to have been detained unlawfully. Such guarantee of right is non-derogable and

absolute in circumstances including during the state of emergency or any situations.

TLHR deems the summoning of political dissents and their detention without legal ground is an unconstitutional act and a breach of Article 9 of the ICCPR. We urge the government or the National Council for Peace and Order (NCPO) to;

1. Stop summoning a person to report themselves and stop detaining a person simply because of their political criticisms or their criticisms of the performance of the government. It is an act of persecution against political dissents and an unlawful act indeed.
2. Revoke the Head of the NCPO's Order no. 3/2558 since it is not necessary to be implemented and stop invoking power as per Section 44 of the Interim Constitution and release the persons being held in custody immediately and unconditionally.
3. Political criticisms and criticisms of the performance of either the government or the National Council for Peace and Order (NCPO) if carried in good faith are a right that can be exercised according to the Constitution and ICCPR.

Justice is the foundation of a society and democracy shall not flourish without justice.

With respect in people's rights and liberties

Thai Lawyers for Human Rights (TLHR)