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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 August 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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THAILAND: End Arbitrary Arrest and Arbitrary Detention against pro-democracy activists

The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the UN Human Rights Council (UNHRC) to the fact that on 11 May 2016, in response to expressed concerns about freedom of expression and opinion, Thailand's delegation to the Universal Periodic Review stated to the UN Human Rights Council (HRC) that the Government "encourages exchanging of views including through public hearings, about national reform and drafting of the new Constitution by all sectors of the society, both at national and international level."

The ALRC would like to point out the manifest inaccuracy of this statement. The May 2014 Military coup, establishing the National Council for Peace and Order (NCPO), the junta ruling body, has sent Thailand's human rights situation into a free fall. Although the Government and the NCPO scheduled the date of 7 August 2016 for the constitutional referendum, the rights groups noticed that the referendum process was not "Free and Fair". This is due to the fact that the government imposed the Head of the NCPO No. 3/2015, the Constitutional Referendum Act B.E. 2559 (2016), Article 116 of Criminal Code (Sedition), and the Computer-Related Crime Act B.E. 2550 (2007) to restrict people's right to discuss and criticise decisions about their country in the draft of Constitution and referendum process.

According to Thai Lawyers for Human Rights (TLHR), from 29 April 2016 to 5 August 2016, at least 195 individuals have been arrested and detained. Of these, 149 individuals were charged with the Head of the NCPO No. 3/2015, 28 individuals were charged with the Constitutional Referendum Act B.E.2559 (2016), 13 individuals were charged with Article 116 of Criminal Code (Sedition), and one person was charged with the Computer-Related Crime Act B.E. 2550 (2007). Many of the charges against individuals, which include student activists, labor activists, reporters, and ordinary persons, involve denials of rights to freedoms of expression, association, and assembly in the referendum process. Apparently, the Government fails to recognize rights guaranteed by Articles 19 of the Universal Declaration of Human Rights (UDHR) and Article 25 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Thailand in 1948 and 1996, respectively.

It can be clearly seen that the deprivation of liberty, especially arbitrary arrest and arbitrary detention result from the exercise of the rights to freedoms of expression, association, and assembly. Therefore, the government also fails to recognize rights guaranteed by Article 9 of the ICCPR. Moreover, the ALRC has found that the rights of individuals who were prosecuted by the authorities do not accord with Criminal Procedure Code and Article 14 of the ICCPR. The ALRC is gravely concerned with the violation of internationally protected fair trial rights, especially right to have adequate time and facilities for the preparation of his defence, and rights to fair hearing by a competent, impartial, and independent tribunal in the Military Court.

For instance, the police accused 13 pro-democracy activists of violating the Head of the NCPO No. 3/2015, which bans political gatherings. The activists were seeking to distribute campaign flyers for the upcoming draft constitution referendum. On 23 June 2016, at around 5:30 p.m., combined forces of police and Military arrested the New Democracy Movement (NDM), student activists, and members of the Triumph Labour Union. All 13 of them were arrested while they were distributing leaflets, fliers, and documents to passers-by. The documents give a little information about the draft Constitution and explain the reasons why people should reject it. All of them were apprehended and taken to the Bang Sao Thaong Police Station. They were detained in police custody overnight and six of them who requested bail during the police stage were denied bail.

On 24 June 2016, all the 13 were brought to the pre-trial remand hearing at the Bangkok Military Court. Although, the alleged offenders' attorneys filed a motion to object to the remand request, citing that "the Head of the NCPO No. 3/2015 is not an applicable law and its Article 12 (ban on any political gathering of five persons or more) is a restriction on the rights to freedom of expression and peaceful assembly, which are recognized in the ICCPR, to which Thailand is a state party. Also, the right to freedom of expression should not be criminalized. In addition, the NCPO Announcement no. 37/2014 which specifies the jurisdiction of the Military Courts states that the Military Court can only adjudicate cases relating to offences against the Announcements or Orders of the NCPO, not the Order of the Head of the NCPO. Therefore, the Bangkok Military Court has no power to review the case and to conduct the remand hearing in this case.

Nevertheless, the Military Court persisted to issue a writ to have the 13 alleged offenders remanded, claiming that they were just arrested and more time was needed for police investigation including several more witnesses to be interviewed and deeming that the objection of the alleged offenders was a legal defence. Thus, the Court dismissed the objection to the remand motion, and approved a 12-day pre-trial remand, as submitted by the police.

In addition, on 10 July 2016, the Ban Pong police searched the vehicle of the three NDM activists, and found campaign material about the Constitutional Referendum and “Vote No” fliers. They were then held in custody for questioning, together with a reporter from *Prachatai*. No charges were initially pressed against them, but afterwards the Commander of the Provincial Police Region 7 instructed the officer to charge them with violating the Constitutional Referendum Act B.E. 2559 (2016) for preparing to distribute the fliers.

The officials have thus seized the evidence and informed the arrestees of the charge against them for “having transmitted a text, or an image, or sound through the print media, or radio, or television, or electronic media, or other channels, which are inconsistent with the truth or are violent, aggressive, rude, inciting or threatening and aimed at preventing a voter from casting a ballot or vote in any direction shall be considered as disrupting the referendum”, which is an offence of the Constitutional Referendum Act’s Section 61 Paragraph Two.

Of late, at 8:20 p.m., it was reported that four vehicles of police officials have laid siege to the residence of Mr. Panuwat Songsawatchai, student of Faculty of Political Science, Maejo University Phrae Campus, Maejo University. Mr. Songsawatchai was another suspect in the same case, who was summoned to turn himself in at the Ban Pong Police Station as a result of his activity at the referendum monitoring center in the morning. He was pressed with the same charge as the four individuals.

On 11 July 2016, at 9:00 a.m., all five were brought to the pre-trial remand hearing at the Provincial Court of Ratchaburi. The police investigator of Ban Pong Police Station asked the Court to have them remanded for 12 days and the Court approved what the police submitted. However, five alleged offenders have been released by the order of the Court, by placing bail bond at 140,000 Baht (around 3,975 \$USD) each.

Lastly, only one day before the referendum, the Thai authorities arrested two pro-democracy activists in Chaiyaphum Province, northeastern Thailand, for distributing anti-Constitution flyers. One of the students, Mr. Jatupat Boompatararaksa, a core member of the Northeastern (E-Saan) New Democracy Movement (NDM) activist group, refused to apply for bail and had been on hunger strike in the District Prison of Phu Khiao. He preferred to affirm his innocence and to protest against the country’s broken justice system. The other student, Mr. Wasin Prommanee, has been bailed out.

According to the inquiry officials, the two alleged offenders were accused of committing an offence against the Constitutional Referendum Act’s Section 61 (1) and Section 61 paragraph Two, punishable by not more than ten years of imprisonment, a fine of 200,000 Baht, and against the Announcement of the Council for Democratic Reform under Constitutional Monarchy (CDRM) no. 2, the previous junta, punishable by not more than six months of imprisonment or a fine of not more than 1,000 baht or both.

In view of the above, the ALRC requests the Human Rights Council to urge the Thai government to immediately drop all charges against political activists, especially student activist and to release those jailed for voicing dissent on the draft charter in the run-up to the referendum. In addition, the Thai government should suspend the use of military courts and military orders in cases involving civilians. These measures are now urgently needed as Thailand moves towards an election in 2017 aimed at restoring democracy, as proposed in the government's roadmap.

Finally, the ALRC believes that the election next year represents an opportunity for Thailand to meet the commitment it made at the UN Human Rights Council during its Universal Periodic Review in May 2016 to fully respect the freedom of expression, and therefore guarantee a more inclusive and participatory process that involves all political parties, civil society, and the media in an open and non-threatening environment.