



General Assembly

Distr.: General
7 August 2015

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinion adopted by the Working Group on Arbitrary Detention at its seventy-second session, 20–29 April 2015

No. 15/2015 (Thailand)

Communication addressed to the Government on 24 February 2015

concerning Yongyuth Boondee

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights.*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration and in the relevant

* Thailand acceded to the International Covenant on Civil and Political Rights on 29 October 1996.



international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Yongyuth Boondee is a Thai citizen, born in 1988. Mr. Boondee works as a construction worker and he is a member of the United Front for Democracy against Dictatorship.

4. The source reports that Mr. Boondee was arrested on 28 July 2014 in front of a convenience store near Chiang Mai University. Mr. Boondee was met by around 10 military officers when he left the convenience store. They did not inform him which unit they were from. He was then arrested, put into a van and blindfolded.

5. According to the source, the soldiers did not present any warrant for the arrest. Mr. Boondee had reportedly appeared in an order issued by the National Council for Peace and Order on 10 June 2014. The order had stated that he was to report to the Army Club on Thewet Road in Bangkok on 11 June 2014. However, he had not reported out of fear of his safety. Subsequently, an arrest warrant had reportedly been issued against him by the Nonthaburi Province Central Court on 18 July 2014 related to his alleged involvement in several armed incidents in Bangkok and Nonthaburi Province.

6. In the evening of his arrest on 28 July 2014, Mr. Boondee was transferred from Chiang Mai to Bangkok, where he arrived at around 6.00 a.m. on 29 July. From 29 July to 10 August, he was reportedly held in a military camp in Bangkok. He did not know in which military camp he was held. He was then detained for one night on 10 August 2014 at the Crime Suppression Division and was subsequently detained at Nonthaburi Province Central Prison from 11 August 2014.

7. The source considers that the detention of Mr. Boondee from 28 July to 11 August 2014 was at the order of the National Council for Peace and Order, whereas the order for his detention from 11 August had been issued by the Nonthaburi Provincial Court.

8. According to the source, on 10 August 2014, the Provincial Police Region 1 held a press conference at the office of the Royal Thai Police, alleging that Mr. Boondee had been directly involved in the firing of a M-79 grenade into the Shinnawatra Building 3 in Bangkok. The source reports that Mr. Boondee was present at the press conference. General Pumpanmuang, the then-Deputy Chief of the Royal Thai Police, reportedly stated that the incident had occurred on 7 March 2014 and that Mr. Boondee, together with other accomplices, had fired the grenade into the building and fled. General Pumpanmuang further alleged that, during the interrogation of Mr. Boondee on 1 August 2014, he had confessed that he had been behind the firing of the grenade.

9. During the press conference, General Pumpanmuang also alleged that Mr. Boondee had known about other armed attacks during the demonstration by the People's Democratic

Reform Committee. In this respect, the General cited four incidents that all took place between March and May 2014.

10. According to the source, Mr. Boondee has denied all of the allegations.

11. From 28 July to 11 August 2014, Mr. Boondee was reportedly detained under section 15 of the 1914 Martial Law, which allows for detention without charge for seven days. Section 15 states that “[i]f there is a reasonable ground to suspect that any person is the enemy or violates the provisions of this Act or the order of the military authorities, the military shall have the power to detain such person for inquiry or for other necessities of the military. Such detention shall be no longer than seven days”.

12. On 8 August 2014, local human rights non-governmental organizations met with General Sriwara Rangsiromkul, the Chief of the Provincial Police Region 1, to ask about the whereabouts of Mr. Boondee, given that the seven days limit for detention under the Martial Law had expired on 4 August 2014. The General reportedly told them that Mr. Boondee had made a personal request to stay in custody beyond the seven days. The General did not respond to the request by the organizations for proof of Mr. Boondee’s voluntary request to stay in custody or his whereabouts.

13. On 10 August 2014, the police, led by General Somyot Pumpanmuang, brought Mr. Boondee to a public reconstruction at the alleged crime scenes. The source claims the police decided to bring him out to the public owing to the pressure from human rights groups asking the authorities to reveal his whereabouts.

14. Mr. Boondee reportedly met with a lawyer on 18 August for the first time. He also met with his mother on that day.

15. From 11 August 2014, Mr. Boondee was detained under the Criminal Procedure Code, under which a suspect can be detained for 12 days. The Code allows for seven consecutive detention requests to be made, for a maximum detention of 84 days. The source reports that the police requested all seven 12-day extensions, but could not find sufficient evidence to bring the case forward to the public prosecutor. Consequently, Mr. Boondee was released at the Nonthaburi Provincial Court on or around 3 November 2014.

16. On the day of his release, Mr. Boondee was reportedly rearrested by police from the Minburi police station on the allegation that he had been involved in two violent incidents in the Minburi district of Bangkok. Since then, he has been detained at the Minburi prison. As at 12 December 2014, the Bangkok Criminal Court in Minburi had approved several police requests to extend his detention. However, so far, no charge has been filed against him by the prosecutor. The police officials are reportedly still searching for more evidence.

17. The source reports that police officers from Rayong province, east of Bangkok, came to meet with Mr. Boondee in Minburi prison on 7 and 8 December 2014 and informed him of the allegation that he has been involved in another violent attack in Rayong province in early 2014. The source is thus concerned that Mr. Boondee might eventually be released by the Minburi Provincial Court owing to lack of sufficient evidence, but will then be rearrested by the police from Rayong province, raising serious concerns regarding the basis and legality of his arrest and detention.

18. The source submits that the detention of Mr. Boondee falls under categories I and III.

19. From 28 July to 11 August 2014, Mr. Boondee was held in an unknown location without the knowledge of his family members and friends. On 10 and 11 August, he was detained at the Crime Suppression Division. Under the Martial Law, the military is authorized to detain suspects for up to seven days. Consequently, the detention of Mr. Boondee between 4 and 11 August was without any legal basis. His detention during

this period could fall under category I given that there is “no legal basis to justify the deprivation of liberty”. On 11 August 2014, he was transferred to Nonthaburi Province Central Prison, where he was subsequently detained under the Criminal Procedure Code.

20. From 10 August, while his mother was informed of his whereabouts, he continued to be detained without charge. The same applies following his rearrest on or around 3 November 2014. The source submits that Mr. Boondee’s detention from 10 August 2014 could fall under category III as it runs contrary to article 9, paragraph 3, of the Covenant, which states that “[a]nyone arrested or detained [...] shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody”.

No response from the Government

21. The Working Group addressed a communication to the Government of Thailand on 24 February 2015, in which it requested detailed information about the current situation of Mr. Boondee and a clarification of the legal provisions justifying his continued detention. The Working Group regrets that the Government has not responded to the allegations transmitted to it.

Discussion

22. Despite the absence of any information from the Government, the Working Group considers that it is in the position to render an opinion in accordance with paragraph 16 of its revised methods of work and on the basis of the submissions that have been made to it.

23. The first issue before the Working Group is the 15 days detention from 28 July to 11 August 2014. As the Working Group pointed out in paragraph 25 of its Opinion No. 19/2014 (Thailand),¹ the principle of legality requires compliance with domestic legislation. That requirement has not been met in the present case.

24. The Working Group shares the concern expressed by the Human Rights Committee over emergency legislations that neither place sufficient limits on the derogation from the rights protected by the Covenant that may be made in emergencies, nor guarantee full implementation of article 4 of the Covenant. The Human Rights Committee stated that detention without external safeguards beyond 48 hours should be prohibited and recommended that “[t]he State party should ensure that all the requirements of article 4 of the Covenant are complied with in its law and practice, including the prohibition of derogation from the rights listed in its paragraph 2. In this regard, the Committee draws the attention of the State party to its general comment No. 29”.²

25. The Working Group concludes that the detention of Mr. Boondee for a period of 15 days, without being informed about the charge against him and brought before a judge, constitutes a breach of article 9, paragraph 3, of the Covenant.

¹ A/HRC/WGAD/2014/19.

² See CCPR/CO/84/THA, para. 13. See also paragraph 33 of general comment No. 35, on article 9 (Liberty and security of person), in which the Human Rights Committee states that any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances. See further the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court, adopted by the Working Group on Arbitrary Detention at its seventy-second session.

26. From 28 July to 11 August 2014, Mr. Boondee was held in a location unknown to Mr. Bondee and to his family members and friends, who were unaware that he had been arrested until the police press conference on 10 August. For most of that time, he was held in a military camp in Bangkok. Secret detention in such a manner constitutes an enforced disappearance, which is a particularly aggravated breach of article 9. Under the Working Group's jurisprudence, the detention of a civilian such as Mr. Boondee in a military camp is also in breach of article 9.

27. Immediate rearrest on a new charge upon release by a court on previous charges must be subject to enhanced and anxious scrutiny. In the current case, the rearrest of Mr. Boondee upon release constitutes another breach of article 9.

28. The Working Group has also found violations of the fair trial requirements set out in article 14. Mr. Boondee was arrested on 28 July and gained access to a lawyer for the first time on 18 August 2014. This contravenes articles 14 of the Universal Declaration and of the Covenant.

29. The deprivation of liberty of Mr. Boondee falls within category III.

30. The Working Group adds its serious concerns to those expressed by the Committee against Torture³ at the declaration of martial law throughout Thailand,⁴ and that, in practice, all arrested and detained persons are not provided with all the fundamental legal safeguards from the very outset of their deprivation of liberty. Such legal safeguards include, but are not limited to, maintenance of an official register of detainees, the right of detainees to be informed of their rights, the right to promptly receive independent legal assistance and independent medical assistance and to contact relatives, impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability of judicial and other remedies to detainees and persons at risk of torture and ill-treatment that would allow them to have their complaints promptly and impartially examined, to defend their rights and to challenge the legality of their detention or ill-treatment. The Committee is further concerned that information requested on monitoring safeguards was not provided, including information on the success of habeas corpus petitions.

31. The Working Group adds its recommendations to those expressed by the Committee that the State party should take effective measures to ensure, in law and in practice, that all detainees are afforded all fundamental legal safeguards from the very outset of their detention, including the rights to have prompt access to an independent lawyer and an independent medical doctor, to notify a relative, to be informed of their rights at the time of detention, including about the charges laid against them, to be registered at the place of detention and to appear before a judge within a reasonable period of time, in accordance with international standards. The State party should also take the necessary measures to provide an effective free legal aid system and put in place measures to monitor the practice of all law enforcement and security officials to ensure that those safeguards are provided in practice as well as in law. The State party should take disciplinary or other measures

³ See CAT/C/THA/CO/1.

⁴ The Working Group reiterates that States derogating from procedures set out in article 9 of the Covenant in circumstances of armed conflict or other public emergency must ensure that such derogation does not go beyond that strictly required by the exigencies of the actual situation and that they reflect the principle of proportionality, which is common to derogation and limitation powers. This becomes even more relevant the longer the duration of the derogation, which, in any case, must never approach a normal or permanent state. The Working Group builds on the practice of the Human Rights Committee and its own constant jurisprudence, which have established these requirements as customary international law. See A/HRC/WGAD/2014/19, para. 23.

against officials responsible in cases where those safeguards are not provided to persons deprived of their liberty.⁵

Disposition

32. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Yongyuth Boondee is in contravention of articles 9 and 14 of the Universal Declaration and the Covenant, and is arbitrary and falls within category III.

33. The Working Group requests the Government of Thailand to take the necessary steps to remedy the situation of Mr. Boondee without delay and bring it into conformity with the standards and principles set forth in the Covenant.

34. The Working Group requests the Government of Thailand to release Mr. Boondee immediately and accord him an enforceable right to reparation in accordance with article 9, paragraph 5, of the Covenant and the Working Group's jurisprudence.⁶

[Adopted on 28 April 2015]

⁵ See CAT/C/THA/CO/1, para. 13.

⁶ See, for instance, Opinion No. 52/2014 (Australia and Papua New Guinea), A/HRC/WGAD/2014/52 and Corr.1.