
**ADVANCE UNEDITED
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Human Rights Council
Working Group on Arbitrary Detention**ADVANCE UNEDITED VERSION****Opinions 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 Mr. 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 of Human Rights and in the relevant 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. Mr. 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 (UDD).

4. The source reports that Mr. Boondee was arrested on 28 July 2014 in front of the 7/11 convenience store near Chiang Mai University. Mr. Boondee was met by around ten 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 reportedly appeared in an order issued by the National Council for Peace and Order (NCPO) on 10 June 2014. The order stated that he had to report to the Army Club on Thewet Road in Bangkok on 11 June 2014. However, he did not report to the NCPO due to 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. Following his arrest on 28 July 2014, Mr. Boondee was transferred from Chiang Mai to Bangkok later in the evening, where he arrived at around 6.00am 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 (CSD) and was subsequently detained at Nonthaburi Province Central Prison from 11 August 2014 onwards.

7. The source considers that the detention of Mr. Boondee from 28 July to 11 August 2014 (15 days) was at the order of the NCPO whereas the order for his detention from 11 August onwards was 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 (RTP), alleging that Mr. Boondee was 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 RTP, reportedly stated that the incident occurred on 7 March 2014 and that Mr. Boondee together with other accomplices fired a M-79 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 was behind the shooting of the M-79 grenade.

9. During the press conference, General Pumpanmuang also alleged that Mr. Boondee knew about other armed attacks during the demonstration by the People's Democratic Reform Committee (PDRC). In this respect, the General cited four incidents which all took place between March and May 2014.

10. According to the source, Mr. Boondee has denied all these 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 NGOs met with General Sriwara Rangsiptomkul, 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 NGOs 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 due to the pressure from human rights group 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 onwards, Mr. Boondee was detained under the Criminal Procedure Code, which allows for 12 days detention. The Criminal Procedure Code allows for detention for seven consecutive requests (maximum of 84 days). The source reports that the police requested for the extension of his detention seven times (12 days each time). However, the police 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 same day of his release, he was reportedly re-arrested by police from the Minburi police station on the allegation that he had been involved in two violent incidents in Minburi district of Bangkok. Since then, he has been detained at the Minburi prison. As of 12 December 2014, the Bangkok Criminal Court in Minburi has approved the police request to extend his detention for several consecutive times. However, so far, no charge has been filed against him by the prosecutor. The police officials are reportedly still investigating 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 between 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 due to lack of sufficient evidence, but would then be re-arrested 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 under the Working Group’s mandate.

19. From 28 July to 11 August 2014 (15 days), Mr. Boondee was held in an unknown location without the knowledge of his family members and friends. On 10 to 11 August, he was detained at the CSD. Under the Martial Law, the military is authorized to detain anybody for a limited period of up to seven days. Consequently, the detention of Mr. Boondee between 4 and 11 August (8 days) 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 onwards, while his mother was informed of his whereabouts, he continued to be detained without charge. The same applies following his re-arrest on or around 3 November 2014. The source submits that his detention from 10 August 2014 onwards could fall under category III as this runs contrary to article 9, paragraph 3 of the International Covenant on Civil and Political Rights 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, requesting detailed information about the current situation of Mr. Yongyuth 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, see paragraph 16 of its revised methods of work,¹ renders an Opinion on the case 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 28 July to 11 August 2014. As the Working Group pointed out in Opinion No. 19/2014 (Thailand)² at [25], the principle of legality requires compliance with domestic legislation. That requirement has not been met in the present case.

24. 24. The Working Group shares the concern expressed by the Human Rights Committee over the emergency legislations which does not place sufficient limits on the derogation from the rights protected by the International Covenant on Civil and Political Rights that may be made in emergencies, nor does it guarantee full implementation of article 4 of the Covenant. The Human Rights Committee stated that detention without without external safeguards beyond 48 hours should be prohibited and recommended that

“The 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.”³

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 See for instance Opinion No. 5/2014 (Iraq) with references in [15]-[16] ‘Evidence’ and Opinion No.52/2014 (Australia and Papua New Guinea).

² A/HRC/WGAD/2014/19.

³ CCPR/CO/84/THA, para. 13. See also General Comment No. 35 Article 9 (Liberty and security of person)CCPR/C/GC/35 [33] “any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances”, and the United Nations Basic Principles and Guidelines on the right of anyone deprived of liberty to bring proceedings before court, adopted by the Working Group on Arbitrary Detention at its seventy-second session, 20-29 April 2015.

26. From 28 July to 11 August 2014, Mr. Boondee was held in an unknown location, unknown both to Mr. Boondee himself and his family members and friends who did not know that he had been arrested before the police press conference on 10 August. For most of this time he was held in a military camp in Bangkok. Secret detention in such a manner constitutes an enforced disappearance which is particularly aggravated breach of Article 9. Under the Working Group jurisprudence, the detention of a civilian as Mr. Boondee in a military camp is also in breach of Article 9.

27. Immediate re-arrest 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 re-arrest of Mr. Boondee upon release constitutes another breach of Article 9.

28. The Working Group has also found violations of the fair trial requirements in Article 14. Mr. Boondee was arrested on 28 July and got access to a lawyer for the first time on 18 August 2014. This contravenes of articles 14 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights.

29. The deprivation of liberty of Mr. Yongyuth Boondee falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

30. The Working Group joins the Committee against Torture in its Concluding observations, Thailand (2014),⁴ and is seriously concerned at the declaration of martial law throughout Thailand,⁵ 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 (art. 2).”

31. The Working Group also joins the recommendations of the Committee against Torture in its Concluding observations, Thailand (2014):⁶

“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 reasonably period of time, in accordance with international standards. The

⁴ CAT/C/THA/CO/1.

⁵ 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 Opinion No. 19/2014 (Thailand) at [23], A/HRC/WGAD/2014/19.

⁶ CAT/C/THA/CO/1.

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

Disposition

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

The deprivation of liberty of Mr. Yongyuth Boondee is in contravention of articles 9 and 14 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and is arbitrary and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

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

34. The Working Group requests the Government of Thailand to release Mr. Yongyuth Boondee immediately and accord him an enforceable right to reparation in accordance with article 9, paragraph 5 of the International Covenant on Civil and Political Rights and the Working Group’s jurisprudence⁷

[Adopted on 28 April 2015]

⁷ See for instance Opinion No.52/2014 (Australia and Papua New Guinea).