

Raid on Prachatai

A “right” to complain against police is no right at all if it cannot be heard, investigated and enforced

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It was reported on Sunday, March 8 that according to the Prime Minister of Thailand, Abhisit Vejjajiva, the arrested director of the independent news agency Prachatai is entitled to make a complaint if she feels that the police action against her was unjustified. The Asian Human Rights Commission (AHRC) has already condemned in the strongest possible terms the raid on the Prachatai office and arrest of its director on March 6 on charges under the country’s draconian computer new law (AHRC-STM-051-2009). According to the Bangkok Post, the prime minister said that the arrest was a matter of law enforcement, but that the accused director, Chiranuch Premchaiporn had a right to complain if she thinks otherwise.

The prime minister’s comment raises an interesting and pressing question: to whom should she complain? According to him, “If feel there was an error in law enforcement they can make a complaint to me, I will take care of it.” What does his comment mean? How will he “take care of it”? What measures are in place for the prime minister to undertake routine inquiries into police operations? And, is he implying that all persons in Thailand who have a complaint against the law enforcement authorities should take them up with him? If so, the prime minister would soon find himself overwhelmed daily with thousands of complaints of illegal arrest, arbitrary detention, fabricated evidence, falsified charges, corruption, entrapment, extortion, custodial assault and torture, extrajudicial killing and enforced disappearance, just to name a few of the abuses that the police in Thailand routinely perpetrate.

The empty rhetoric of the prime minister exposes the reality in Thailand that human rights groups, including the AHRC, have for years grappled with, struggled against, and raised at the highest levels in the country and abroad: there is no one with whom to lodge a complaint against the police and get a satisfactory result. A “right” to complain is no right at all if it is not accompanied by the means for effective inquiry and redress. The hundreds of cases that the AHRC and its partners have worked on in detail during the last few years all speak to the fact that the so-called right to complain against the police is a non-existent right in Thailand. Even extremely high-profile cases like the police abduction and presumed killing of human rights lawyer Somchai Neelaphaijit, the fifth anniversary of which falls this Thursday, March 12, have resulted in the perpetrators escaping justice. The case remains unsolved, despite the intense efforts of literally hundreds of people on behalf of the victim, including family, lawyers, journalists, human rights defenders, diplomats, academics and others.

The AHRC and its partners have for some years raised the absence of an agency to receive, process, and investigate complaints against the police in Thailand. Back in April 2005 the sister organisation of the AHRC, the Asian Legal Resource Centre, wrote in a report to the UN Human Rights Committee that was then assessing Thailand’s record of compliance with the International Covenant on Civil and Political Rights, a key human rights treaty to which the country is a voluntary party, that,

“No specialised agency exists to receive and investigate complaints of serious rights violations against the police. Where the police commit gross abuses of human rights, or fail to perform their duties as required by law to the same effect, there are no other institutions available in Thailand to initiate steps for redress as envisaged by article 2 . Although the largest numbers of public

complaints about state agents are against police officers, no specialised agency exists that is capable of registering complaints and initiating investigations that may lead to criminal prosecution of police.”

In its concluding report on Thailand, the Committee in July 2005 acknowledged this fundamental flaw in the criminal justice system and had among its recommendations that, “The State party should actively pursue the idea of establishing an independent civilian body to investigate complaints filed against law enforcement officials.” Since that time, not only has there been no action on this recommendation, not a single recommendation of the Committee has, to the knowledge of the AHRC, been satisfactorily addressed.

The prime minister’s flippant promise to “take care of it” is indicative of the feudal patterns of thought that continue to underpin much of his country’s political behaviour. When someone has something bad happen to her then she is expected to make a complaint like one of her ancestors, coming to the outside of a palace to ring a bell or stand at a post and cry out her petition in the faint hope of receiving a kind hearing from its occupant. When these types of practices are continued in modern forms then institutional measures and systematic procedures for handling and processing complaints and dealing with abuse are not established, or if established, they are not taken seriously either by the general public or even the people responsible for giving them effect.

Sometimes when victims of abuse, lawyers or human rights advocates observe the lack of avenues for complaints against the police in Thailand, government officials or others disingenuously protest and point to the National Human Rights Commission and the Ombudsman. However, neither of these agencies has the authority, training nor mandate to investigate and provide redress in the manner envisaged by article 2 of the International Covenant on Civil and Political Rights, where the government is obliged to ensure that the victim has an “effective” remedy determined by “competent” judicial, administrative or legislative authorities. In fact, neither of these agencies has been able to perform even up to the minimum requirements of its mandate, with the NHRC since 2006 in a legal limbo and the Ombudsman being a non-entity for the purpose of protecting and upholding human rights.

When faced with tangled human rights problems like the recent raid on Prachatai and arrest of its director, instead of responding with meaningless comments like that he “will take care of it”, the prime minister of Thailand should think a little deeply about the features and causes of the problem, obtain advice about these, and propose measures to address their systemic aspects. In this case, the prime minister should review recommendations for the establishing of an agency in accordance with the findings of the United Nations, obtain opinions from informed members of the government and public in an intelligent and organized manner, and begin the process of establishing an agency that will do this important work properly, diligently and effectively.

With regards to the specific case of Prachatai, there are two further elements that need to be examined: first, the law under which its director has been charged; and second, the targeting of this specific news outlet. To the first, the Computer Crime Act 2007 must either be revoked or heavily amended. The law is patently an instrument for the stifling of free speech and narrowing of spaces for social discourse through the Internet and related mediums, and in its present form has no place in an open society. To call the actions taken under it “law enforcement”, as the prime minister did, is just another way of saying “denial of fundamental civil rights enforcement”.

To the second, it is equally clear that there exists in Thailand today a project to target certain groups and individuals for harassment, arrest and prosecution as a warning to others not to overstep the many boundaries that prohibit free debate on topics of great importance to the country and its people, including through the use of lese-majesty and criminal defamation laws, as well numerous

other ambiguous offences that may be stretched to cover just about anybody and any situation. As a result, the mainstream media is practicing self-censorship on a level unprecedented in the last two decades, and the few groups that dare to publish and allow debate on otherwise prohibited topics, like Prachatai, become prey for politically-motivated legal actions. Thus to describe the work of the police in this case as “law enforcement” also is just another way of saying “political-order enforcement”.

Although the arrest of Chiranuch Premchaiporn and raid on Prachatai are deeply regretted, they also present a good opportunity for very widespread and intense discussion on declining civil and political freedoms in Thailand, the increasingly dangerous environment in which human rights defenders are struggling to work, and the forces responsible for these conditions. The Asian Human Rights Commission is aware that Prachatai and its friends will do their best to sustain these discussions and offers them its wholehearted backing. For its part, the AHRC will be following the legal case against Chiranuch and examining the issues surrounding and behind it with great interest, as well as reporting it to international forums, including through the UN Human Rights Council, which is meeting in Geneva this week. It again takes the opportunity to call upon groups concerned with human rights, freedom of expression and citizens’ journalism around the world to join in condemnation of this raid and arrest, and extend full support to Prachatai and its director. If this is not done, then the harassment and arrests will only continue until soon people in Thailand will find that the shrinking space in which to talk openly and honestly about issues of national importance has reached the point that there is no more space left to shrink.

P.S.

From Prachatai.

<http://www.prachatai.com/english/news.php?id=1040>