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HUMAN RIGHTS COUNCIL

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolution 16/4.

I would like to draw the attention of your Excellency's Government to information I have received **regarding the expulsion from Thailand of Mr. Ibrahim Fahad A. Alsubaie, under immigration laws, following his conviction for defamation under article 112 of the Criminal Code and article 14(2) and 14(3) of the Computer Crime Act.**

According to the information received:

Mr. Ibrahim Fahad A. Alsubaie is a Saudi national, living with his partner a Thai national woman and their six-year old child.

On 17 December 2010, a company called "Country Group" filed a complaint to the authorities stating that Mr. Alsubaie had posted a message on the internal chat room of his company website about the health condition of the King of Thailand which allegedly led to the fall of the stock market in Bangkok. On 28 March 2012, the Bangkok South Criminal Court sentenced him to 3 year imprisonment, under article 112 of the Criminal Code and article 14(2) and 14(3) of the Computer Crime Act. The sentence was later reduced following Mr. Alsubaie's cooperation with the prosecution.

On 7 June 2012, Mr. Alsubaie submitted an appeal, which was dismissed by the Court of Appeal.

On 6 November 2013, Mr. Alsubaie's partner presented a request for Royal Pardon. On 22 January 2014, Mr. Alsubaie was granted Royal Pardon and was

transferred to an immigration detention facility. He was later released on bail on 24 January 2014.

On 22 January 2014, the Immigration Bureau issued a legal notification indicating that Mr. Alsubaie will be expelled from the country and is prohibited from entering in the Kingdom of Thailand, in accordance with the Immigration Act BE 2522 Section 12.

Mr. Alsubaie was not informed of his rights to appeal that decision, required to be filed within 48 hours after notification. Mr. Alsubaie was informed that his expulsion order will be effective on 23 April 2014.

I reiterate concerns regarding the use of defamation laws to restrict the right to freedom of opinion and expression in the Kingdom of Thailand, as previously expressed to your Excellency's Government by Special Procedures mandate-holders on numerous occasions, including on the case of Mr. Ibrahim Fahad A. Alsubaie, which was already brought to your attention in December 2012. While acknowledging receipt of the replies received from your Excellency's Government, I would like to stress my continuing concern regarding the existence and use of defamation law in the country, imposing criminal sanctions. I am also concerned with the fact that civil or administrative sanctions for defamation should not be so large as to exert a chilling effect on freedom of expression and opinion. Question is raised relative to Mr. Alsubaie's rights in the context of the procedure of expulsion, in particular the guarantees of non-refoulement.

While I do not wish to prejudge the accuracy of these allegations, I would like to refer to your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a party, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

I would like to draw your Excellency's Government's attention to the principle of proportionality of the sentences and penalties imposed in application of defamation laws. I reiterate that criminal sanctions, in particular imprisonment, for libel and defamation are not deemed proportional with an effective exercise of the right to freedom of opinion and expression. In particular, I would like to refer to the General Comment no.34 of the Human Rights Committee (CCPR/C/GC/34), which emphasizes that "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. Accordingly, the Committee expresses concern regarding laws on such matters as, lese majesty, desecration, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely

on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.” (para.38)

The Human Rights Committee also stressed that “Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. (...) States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.” (para. 47)

I also take the opportunity to reiterate the recommendations made in the reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (E/CN.4/2000/63, para.52 and E/CN.4/2001/64, para.48), which urged all States to review their defamation laws in order to ensure that they do not restrict the right to freedom of expression and to bring them in line with their international human rights obligations, which inter alia stressed that civil sanctions for defamation should not be so large as to exert a chilling effect on freedom of expression and should be designed to restore the reputation harmed, not to compensate the plaintiff or to punish the defendant; in particular, pecuniary awards should be strictly proportionate to the actual harm caused and the law should prioritize the use of a range of non-pecuniary remedies.

While acknowledging the Royal Pardon granted to Mr. Alsubaie, his expulsion and deportation from the country under the Immigration Law, following his conviction for defamation under article 112 of the Criminal Code and article 14(2) and 14(3) of the Computer Crime Act, raises concerns as to the proportionality of this decision with an effective exercise of the right to freedom of opinion and expression.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Alsubaie in compliance with the above international instruments.

Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?

2. Please provide information on measures taken or to be taken, in order to repeal criminal defamation laws in Thailand, in particular measure to bring article 112 of the Criminal Code and article 14 of the Computer Crime Act in conformity with Thailand's obligations under international human rights instruments, namely the International Covenant on Civil and Political Rights.

3. Please provide information on measures taken to ensure that penalties and sanctions, including the expulsion from the country, imposed on Mr. Alsubaie, following his conviction for defamation under article 112 of the Criminal Code and article 14(2) and 14(3) of the Computer Crime Act, are proportional with an effective exercise of his right to freedom of opinion and expression, and in conformity with international standards.

4. Please provide information on measures taken to ensure that Mr. Alsubaie's rights in the context of the procedure of expulsion are guaranteed, including the guarantees for non-refoulement, in conformity with international standards.

I undertake to ensure that your Excellency's Government's response will be available in the report I will submit to the Human Rights Council for its consideration.

While waiting for your response, I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Ibrahim Fahad A. Alsubaie are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. I also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of my highest consideration.

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression