

**NATIONS UNIES
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AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/4 and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding recent cases of alleged human rights violations in relation to the lèse majesté law in the Kingdom of Thailand, as summarized below.

1. **Mr. Somsak Jeamteerasakul**, an Associate Professor of History at Thammasat University in Bangkok: Over the past decade, Mr. Jeamteerasakul has written several articles regarding the monarchy and has spoken publicly about the issue, including a statement expressing "the need to transform and adapt the monarchy according to the principles of democratic governance, rule of law, and the advances of the modern world". He has also advocated for the abolishment of article 112 of the Penal Code, known as the lèse majesté provision, which prescribes a jail term of three to 15 years for "whoever defames, insults or threatens the king, the queen, the heir to the throne or the regent." Most recently, he has presented an eight-point proposal to reform the monarchy.

According to information received, on 7 April 2011, during an interview, the commander-in-chief of the Royal Thai Army, General Prayuth Chanocha, reportedly referred to "a mentally ill academic" who "is intent on overthrowing the monarch". While Mr. Jeamteerasakul's name was not mentioned, such statements have reportedly contributed to creating a climate of fear in society to express any criticism or commentary about the monarchy.

On 19 April 2011, Mr. Jeamteerasakul was allegedly informed by his contacts who had participated in a meeting between a group of Thai non-governmental organizations and the Prime Minister Mr. Abhisit Vejjajiva, that the Prime Minister had mentioned that the army has been putting pressure on him to deal

with anti-monarchy elements in the country, and that he had specifically mentioned Mr. Jeamteerasakul's name.

On 24 April 2011, Mr. Jeamteerasakul released a statement during a press conference at Thammasat University about the threats he has received during the previous two months, primarily from the army, as a result of his comments regarding the role of the monarchy in Thailand.

During the week of 25 April 2011, two men on separate motorbikes were allegedly seen by a security guard surveying the area near Mr. Jeamteerasakul's house. When asked by the security guard what they were doing, they allegedly replied that they had come to "pick up the teacher".

On 27 April 2011, an arrest warrant for Mr. Jeamteerasakul was submitted to the court by the police based on a complaint submitted by the Army's legal division of the police, but was rejected.

On 2 May 2011 at 8:00 p.m., a programme was broadcast on *Channel 9*, a television station owned by the Army, which showed a photo of Mr. Jeamteerasakul and allegedly accused him of being an anti-monarchist wanting to overthrow the monarchy. Mr. Jeamteerasakul has since then been receiving anonymous phone calls warning him to be careful, and stating that security officials are closely monitoring his movements and are ready to arrest him upon receiving a court order.

2. **Mr. Thanthawut Taweewarodomkul**, administrator of a website which supports the political pressure group known as the "United Front for Democracy Against Dictatorship" (UDD), whose supporters are commonly referred to as the "red shirts": The UDD is opposed to the current coalition Government led by the Democrat Party in the Kingdom of Thailand, and supports the former Prime Minister, Mr. Thaksin Shinawatra, who was ousted from power on 19 September 2006.

According to information received, in the beginning of March 2010, Mr. Taweewarodomkul had posted two messages online before the clashes took place in April and May 2010 between anti-Government protesters and the military. The first message stated that if the "red shirt" protesters die in clashes with the military, the King should be held responsible, while the second alluded to the King as the "father" who should intervene if "sons and daughters are fighting" before anyone is killed. This message also referred to the intervention by H.M. King Bhumibol Adulyadej on 20 May 1992 following clashes between pro-democracy protesters and the military. It criticized that the intervention came too late as protesters had already been killed during the clashes. The police reportedly discovered these comments on 30 May 2010.

On 1 April 2010, Mr. Taweewarodomkul was charged by the Technological Crimes Suppression Division for violating the lèse majesté law and arrested by the police.

On 15 March 2011, Mr. Taweewarodomkul was sentenced by Bangkok Criminal Court to 13 years of imprisonment for the following offences:

- 10 years of imprisonment for posting messages deemed offensive to the monarchy under article 112 of the Thai Penal Code (lèse majesté law) on the website Nor Por Chor (or UDD) USA (www.norporchorysa.com) between 13 and 15 March 2010;
- 3 years of imprisonment for not removing posts quickly enough on the website that he administers (www.norporchorysa.com), in relation to articles 14 and 15 of the 2007 Computer Crimes Act, which were posted between 13 and 15 March 2010 and deemed offensive to the monarchy.

3. **Mr. Somyot Pruksakasemsuk**, Executive Director of Red Power magazine, former editor of the Voice of Taksin magazine, and a core leader of the UDD. According to information received, on 30 April 2011, Mr. Pruksakasemsuk was arrested for allegedly “attempting to topple the high institution” by the Department of Special Investigation (DSI) in Aranyaprethet, eastern province of Sa Kaeo, as he was trying to cross from Thailand to Cambodia for work related reasons as an employee of a tour guide company. On 3 May 2011, Mr. Pruksakasemsuk was placed in pre-trial custody by a Bangkok criminal court on a charge of lèse majesté. A request for bail has reportedly been rejected.

4. **Mr. Chanin Klaiklueng**, senior air force officer of the Royal Thai Air Force: According to information received, on 5 November 2010, the Royal Thai Air Force filed a complaint against Mr. Klaiklueng for posting messages deemed offensive to the monarchy on his *Facebook* page on 4 November 2010. On 17 November 2010, Mr. Klaiklueng reported himself to the Metropolitan Police Bureau to face the charges. He was released on bail on the same day. On 8 February 2011, the Military Court accepted the case, and Mr. Klaiklueng was indicted by the Judge Advocate-General on 24 counts in relation to 24 messages under Section 112 of the Criminal Code (lèse majesté) and Section 14 of the 2007 Computer Crimes Act. The latter bans circulation of material deemed detrimental to national security or to cause panic, which includes lèse majesté material as specified in the penal code, and carries a penalty of up to five years of imprisonment and a fine of 100,000 baht.

On 27 April 2011, the Military Court set the dates for the trial commencing on 14 July 2011. It has been reported that the trial will be held in secret and that only the defendant and his lawyers will be allowed to attend.

Serious concern is expressed that the above-mentioned cases are not isolated, and that individuals are increasingly being prosecuted under Thailand’s lèse majesté law, thereby curtailing the right of all individuals to seek, receive and impart information and ideas of all kinds in the Kingdom of Thailand. Furthermore, the harassment faced by these individuals and the harsh prison sentences handed down if convicted under article 112 and/or the 2007 Computer Crimes Act exerts a chilling effect on freedom of expression throughout Thai society.

Concerns regarding the use of *lèse majesté* law to restrict the right to freedom of opinion and expression in the Kingdom of Thailand have been expressed to your Excellency's Government by Special Procedures mandate holders on numerous occasions. While acknowledging receipt of the replies received from your Excellency's Government, we would like to express our continuing concern regarding the existence and use of *lèse majesté* law in conjunction with other laws, such as the Computer Crimes Act of 2007, which inhibit dialogue on important issues in the country.

We would like to recall the obligation of your Excellency's Government to fully guarantee the right of all individuals to freedom of opinion and expression, as stipulated in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by the Government of Thailand in 1996. While we note that the right to freedom of expression may be restricted in very limited and exceptional circumstances, any such restriction must satisfy the following, cumulative criteria:

- (1) it must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency);
- (2) it must pursue one of the purposes set out in article 19, paragraph 3, of the ICCPR, namely (i) to protect the rights or reputations of others, or (ii) to protect national security or of public order, or of public health or morals (principle of legitimacy); and
- (3) it must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality) (see *inter alia* the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/17/27, para.24).

Moreover, when a State imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself, and the relation between right and restriction and between norm and exception must not be reversed (see *inter alia* General Comment No.27, as well as draft General Comment No.34 of the Human Rights Committee).

We note that article 112 of the Penal Code, which stipulates that "whoever defames, insults or threatens the King, Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years," does not meet the first criterion mentioned above, as there is no definition of what constitutes "defamation" or "insult". The lack of clarity and ambiguity of the law means that the right to freedom of expression can be arbitrarily or unduly restricted, and promotes self-censorship.

With regard to the second criterion, based on the reply received from your Excellency's Government dated 30 April 2009 regarding another urgent appeal related to charges of *lèse majesté* sent on 6 April, we understand that the justification for the necessity of *lèse majesté* law is to protect Thailand's national security, since "under the Thai Constitution, the monarchy is one of Thailand's principal institutions" (A/HRC/14/23/Add.1, para.2369). However, we would like to reiterate that any restriction sought to be justified on ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use of threat of force" (Principle 2 of the Johannesburg

Principles on National Security, Freedom of Expression and Access to Information, as endorsed in the report E/CN.4/1996/39). Hence, we would like to seek clarification from your Excellency's Government regarding the demonstrable effect of the lèse majesté law and the Computer Crimes Act to protect the country's existence.

In addition, we would like to reiterate our concern that the punishment of imprisonment of up to fifteen years for violating the lèse majesté law is disproportionate. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has on numerous occasions urged all States to decriminalize defamation (see inter alia A/HRC/14/23 (para.82–83), A/HRC/14/23/Add.2, A/HRC/7/14 (paras.39 – 43), A/HRC/4/27 (paras.44 – 57). Moreover, we would like to underscore that in circumstances of public debate concerning public figures in the political domain, the value placed by the ICCPR upon uninhibited expression is particularly high. 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. In the letter dated 30 April 2009, your Excellency's Government stated that "the King himself is not adverse to criticisms", having publicly expressed, in a nationwide address, his discomfort with the lèse majesté law and his disagreement with the notion that "the King can do no wrong". In our view, the fact that the King himself is not averse to criticism could be seen as adding weight to the suggestion that these laws should be reformed or revoked, since they would appear to have limited utility.

Given our concerns expressed above, we would like to reiterate the recommendation made by the Special Rapporteur of the promotion and protection of the right to freedom of opinion and expression to repeal or amend the problematic provisions of the Penal Code and the Computer Crimes Act (A/HRC/17/27/Add.1, paras.2154 – 2156).

Concerning the case of Mr. Somsak Jeamteerasakul and the allegations received indicating that his situation is linked to his work in defence of human rights and fundamental freedoms, including his work advocating for the principles of democratic governance and the rule of law, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected, and to consider repealing article 112 of the penal code and amending the 2007 Computer Crimes Act.

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

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opinion and expression

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