

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers.

REFERENCE: UA
THA 13/2014:

8 December 2014

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 24/7, 25/2, 24/5, 24/6, 25/18, and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the charges against, detention or conviction of 21 persons for alleged crimes of lèse-majesté, including four persons whose cases are under the jurisdiction of military courts.

The twenty-one persons concerned are: **Mr. Khantawut Buranapitak, Mr. Tanat Thanawatcharanon, Mr. Siraphob Kornaroot, Mr. Nat Rungwong, Mr. Tanet Nonthakoat, Mr. Patiwat Saraiyaem, Ms. Porntip Munkhong, Mr. Prasit Chaisrisa, Mr. Katha Pajariyapong, Mr. Akkaradech Eiamsa-art, Mr. Somyot Prueksakasemsuk, Mr. Apichart Pongsawat, Mr. Sombat Boonngam-anong, Mr. Krissada Sitthiyot, Ms. Saran Chuichai, Mr. Assawin Esser Bird, Mr. Ekkapob Luara, Mr. Wuthipong Kachathamkul, Ms. Chatwadee Amornpat, Mr. Plutnarin Thanaboriboonsuk, and Mr. Yutthasak Kangwanwongsakul.**

The allegations described below take place in a context of restrictions on multiple rights and fundamental guarantees, including on the right to freedom of opinion and expression, as well as restrictions against political opponents in Thailand following the

military coup on 22 May 2014. A Joint Urgent Appeal was sent to your Excellency's Government on 28 May 2014 (THA 6/2014) by several Special Procedures of the United Nations, concerning allegations related to the suspension of constitutional guarantees, the detention of senior political leaders and other persons, and the closure of multiple media outlets in Thailand. We take note of the response sent by your Excellency's Government on 13 June 2014. A Joint Allegation Letter (THA 10/2014) was sent by several Special Procedures of the United Nations to your Excellency's Government on 12 September 2014 regarding allegations relative to defamation complaints against two human rights defenders. We take note of the clarifications on this case dated 15 September 2014 and sent by the Ministry of Justice and the Royal Thai Army, which confirm that a complaint had been filed by the Army and the Police against the two human rights defenders in relation to the publication of an open letter. We look forward to receiving your Excellency's Government's response to the questions we had asked in our last letter.

In addition, the cases addressed below include allegations relative to the detention of Mr. Somyot Prueksakasemsuk, who was the subject of previous communications from several Special Procedures of the United Nations, including Joint Urgent Appeals THA 5/2011 (10 June 2011) and THA 9/2011 (20 December 2011) and Letter of Allegation THA 13/2012 (14 December 2012). We take note of the responses provided by the Government to these communications on 26/06/2011 (THA 5/2011); 04/04/2014, 25/05/2012 and 29/06/2012 (THA 9/2011) and 26/12/2012 (THA 13/2012) and refer further to their content below. Mr. Somyot Prueksakasemsuk was also the subject of Opinion No. 35/2012 (A/HRC/WGAD/2012/35), adopted by the Working Group on Arbitrary Detention and which deemed his detention to be arbitrary.

According to the information received:

On 20 May 2014, the Royal Thai Army invoked the nationwide imposition of the 1914 Martial Law Act.

On 25 May 2014, the National Council for Peace and Order (NCPO) announced that monarchy-related criminal acts committed after 25 May 2014 would fall under the jurisdiction of the military courts. The source indicates that the 1955 Martial Court Act that establishes military courts prohibits the appeal of decisions of military courts whenever the 1914 Martial Law Act is imposed. The rules of procedures for civilians before the military courts reportedly lack clarity, including on the starting point of the 12-day limit for pre-trial detention.

Cases of four persons accused under article 112 of the Criminal Code (also known as lèse-majesté law) and article 14 the Computer Crime Act, who are currently in detention and whose cases are under the jurisdiction of the military courts, for having allegedly exercised their right to freedom of opinion and expression:

In March 2014, **Mr. Khantawut Buranapitak**, a lawyer and soldier, reportedly recorded and uploaded to his own website a series of short videos in which he spoke of the political situation in Thailand. These videos were later uploaded to

YouTube by other internet users. He was charged under article 112 of the Criminal Code. Following a summons from the NCPO, Mr. Buranapitak reported himself to the military on 3 June 2014 and was subsequently detained for seven days before his bail request was denied and his detention extended by the criminal court on 10 June 2014. The Bangkok military court ruled that it has jurisdiction over Mr. Buranapitak's case because the video had remained online after 25 May 2014. Mr. Buranapitak was indicted on 1 September 2014, but only became aware of his indictment on 30 September 2014, owing to the special regulations of military courts legal procedures. Mr. Buranapitak appeared before the Bangkok military court on 21 October 2014. The judge ordered the whole proceeding against Mr. Buranapitak to be conducted in closed-door, excluding anybody except his lawyer, on the ground that the *lèse-majesté* case concerned the public moral and security. His family was not allowed to be present during the proceeding either. On 18 November, he was convicted and sentenced to ten years. The sentence was reduced to five years based on the fact that he pled guilty.

Mr. Tanat Thanawatcharanon (also known as Tom Dundee), a singer, actor and activist affiliated to the United Front for Democracy against Dictatorship (UDD) (also called the Red Shirts), was arrested on 9 July 2014 for having allegedly violated article 112 of the Criminal Code and article 14 (2) and (3) of the Computer Crime Act by delivering two political speeches on 6 and 13 November 2013 that were uploaded to YouTube on 25 June 2014. Given the date of the upload, Mr. Thanawatcharanon's case was deemed to fall under the jurisdiction of the military courts, despite he insisted that it was not him who uploaded the videos on Internet. The detention request made by the police was granted on 10 July 2014 by the military court. Mr. Thanawatcharanon remains in custody at the Bangkok Remand Prison. Prior to this arrest and detention, Mr. Thanawatcharanon had already been summoned by NCPO order number 53, arrested on 9 June 2014 in Petchaburi province for defying this order, and released on bail on 25 June.

Mr. Siraphob Kornaroot (also known under the pseudonym 'Rungsila'), a Red Shirt activist who, has been writing poems and articles on political issues which he posted on the Internet and his Facebook page since 2010. Following the military coup, he was summoned by the NCPO under order number 43 but did not report himself. On 25 June 2014, he was reportedly arrested and subsequently detained for two nights in the Kalasin provincial government office and the military camp in Khon Kaen province, before being brought to the Bangkok Remand Prison. He is allegedly accused of violating article 112 of the Criminal Code as well as Sections 14(3) and (5) of the Computer Crime Act for a drawing, an article, and a poem he had published between 2009 and 2013. It is reported that Mr. Kornaroot's case was deemed to fall under the military courts jurisdiction because the allegedly incriminating material is still available online. Mr. Kornaroot was denied release on bail under national security grounds. He was indicted on 24 September 2014. On 13 November, he appeared at the military court where the judge ordered the whole proceeding against him to be conducted in closed-door, on the ground that the case concerns the defamation of the King.

This decision was reportedly taken despite his lawyer's objection and request to have it only partially closed. Mr. Kornaroot pled not guilty.

On 25 May 2014, **Mr. Nat Rungwong**, a journalist who writes articles on political issues, including criticisms of the lèse-majesté law, was arrested and placed under investigation for violating article 112 of the Criminal Code and article 14 of the Computer Crime Act, by having published an article on Thai E-News website in 2011. The military court declared itself competent to try his case because of the continuing availability online of the article. Since his arrest, Mr. Rungwong has remained in detention at the Bangkok Remand Prison and was indicted on 22 August 2014. Mr. Rungwong appeared before the Bangkok military court on 21 October where the judge ordered the whole proceeding against him to be conducted in closed-door, on the ground of public moral and security. He also requested the extension of the arraignment to allow more time to his lawyers to prepare his defence. On 24 November, he was convicted and sentenced to nine years. The sentence was reduced to four years and six months based on the fact that he pled guilty.

Cases of six persons accused under article 112 of the Criminal Code (also known as lèse-majesté law) and article 14 of the Computer Crime Act, who are currently in detention and whose cases are under the jurisdiction of ordinary courts, for having allegedly exercised their right to freedom of opinion and expression:

In 2010, **Mr. Tanet Nonthakoat** was accused of having sent an email to a person located in Spain who was managing a blog advocating against lèse-majesté law, requesting to publish an article that is deemed to be in violation of article 112 of the Criminal Code. On 2 July 2014, Mr. Nonthakoat was detained for seven days at a military camp in Petchaburi Province under the martial law, after police officers had raided his house and confiscated some of his possessions, including CDs and flash-drives. An arrest warrant was issued on 8 July 2014 and Mr. Nonthakoat was accused on 9 July of violating articles 112 of the Criminal Code and article 14(3) of the Computer Crime Act by the Technology Crime Suppression Division of the Royal Thai Police. It is also reported that Mr. Nonthakoat is currently detained at the Bangkok Remand Prison and, despite suffering from serious medical conditions, he is not receiving adequate medical services. While medical examinations were carried out twice in September, it is reported that access to some essential medicines have been irregular and some were not provided until October 2014. His request for release on bail based on medical grounds and presented on 13 October 2014 was rejected the same day by the court which invoked national security and flight risks. Mr. Nonthakoat was indicted on 30 September 2014 and is due to appear before a court on 1 December 2014.

Mr. Patiwat Saraiyaem, the Secretary-General of a Student Federation and a University student, and **Ms. Porntip Munkhong**, a social activist, were both members of the now defunct Prakaifire Acting Troupe, a subgroup of the political group Prakaifire. The Troupe reportedly staged a politically-connoted play on 6

and 13 October 2013. On 30 October 2013, the Network for Monitoring and Defending the Monarchy allegedly decided to file lèse-majesté complaints against the individuals participating in the play. In June 2014, around ten persons affiliated with the Prakaifire group were summoned for questioning by the NCPO. On 6 June 2014, arrest warrants were issued against Mr. Saraiyaem and Ms. Munkhong. Mr. Saraiyaem was arrested on 14 August, transferred to Chana Songkhram Police Station in Bangkok and his bail request was denied the following day. Ms. Munkhong was arrested on 15 August as she was about to board a plane to Australia with a one-year working visa. She was allegedly interrogated five times without a lawyer between 19 August and 24 September; the first interrogation lasted for six hours and was carried by both military and police officers. During one of the interrogations, as a way to threaten her, she was told the authorities would arrest more participants to the play, including children, if she did not confess. Mr. Saraiyaem and Ms. Munkhong are currently detained at the Bangkok Remand Prison and the Women's Correctional Centre, respectively.

Mr. Prasit Chaisrisa, former Parliamentarian and a leader of the UDD, delivered a speech on 7 May 2014 on a public stage and a complaint was filed against him on 9 May 2014 by the Internal Security Operation Command, alleging that the speech violated article 112 of the Criminal Code. Mr. Chaisrisa was summoned under the NCPO order number 5 and was arrested and detained after reporting himself to the military. On 29 May, the criminal court reportedly approved the police's request for detention. It is reported that Mr. Chaisrisa suffers from several health problems, including epilepsy and osteoporosis and has serious difficulties to walk. He had to undertake an operation on 31 October on his leg. Two requests for release on bail were made on medical grounds, but were subsequently denied. He is currently detained at the Bangkok Remand Prison. Due to the detention some of his ailments have worsened. It is alleged that he is not receiving adequate medical care and treatment; for instance, he has not received medication for epilepsy. On 27 October, Mr. Chaisrisa pled guilty to the charges before the Bangkok Criminal Court. The court is due to issue its verdict on 3 December.

Mr. Katha Pajariyapong, a broker for a financial firm, was accused of posting two messages on a political discussion website in 2009, allegedly disseminating rumours on the royal family, allegedly in violation of article 14(2) of the Computer Crime Act. On 25 December 2012, the court of first instance ruled that Mr. Pajariyapong had posted false information in violation of the Computer Crime Act and sentenced him to six years' imprisonment. His sentence was later reduced to four years and he was granted bail. Mr. Pajariyapong appealed his sentence. On 5 March 2014, he was found guilty by the Court of Appeal, but his sentence was reduced to two years and eight months' imprisonment. On 10 March, the Court denied him bail, pending his appeal to the Supreme Court. Mr. Pajariyapong remains in detention at the Bangkok Remand Prison.

In January 2013, **Mr. Somyot Prueksakasemsuk**, a labour activist and former editor of the now defunct political magazine 'Voice of Taksin', was convicted

under article 112 of the Criminal Code over two articles published in the magazine in February and March 2010. The detention of Mr. Prueksakasemsuk was already addressed in two communications sent by several Special Procedures and a decision was adopted in 2012 by the Working Group on Arbitrary Detention. On 19 September 2014, the Court of Appeal reportedly upheld the 11-year imprisonment sentence ordered by the Court of First Instance. His lawyer and family were not informed of the date of the Appeal Court's verdict hearing and could not be present at the hearing. Mr. Prueksakasemsuk appealed his case to the Supreme Court. He remains in detention at the Bangkok Remand Prison.

Cases of eight persons accused and charged under article 112 of the Criminal Code (also known as lèse-majesté law) and article 14 of the Computer Crime Act, for having allegedly exercised their right to freedom of opinion and expression:

On 23 May 2014, **Mr. Apichart Pongsawat**, a student and member of the Law Reform Commission, reportedly participated in an anti-coup demonstration displaying written slogans. He was subsequently arrested. Upon confiscation of his phone, the authorities found that he had allegedly posted a message on Facebook in violation of article 112 of the Criminal Code. On 30 May, the Criminal Court denied Mr. Pongsawat's bail request. On 24 June 2014, the Court denied the police's detention request and Mr. Pongsawat was released. It is reported that the case, however, remains in the hands of the police pending investigation by the Technology Crime Suppression Division of the Royal Thai Police.

On 4 January 2014, **Mr. Sombat Boonngam-anong**, a social and political activist and leader of the Red Sunday Group, allegedly posted an edited photo of the 2006 coup d'état against which a complaint of lèse-majesté had been filed. He was arrested on 5 June 2014 and subsequently detained for alleged violations of article 112 of the Criminal Code. On 2 July 2014, Mr. Boonngam-anong was released on bail by the Bangkok military court. The case is currently pending investigation by the provincial police.

On 19 May 2010, **Mr. Krissada Sitthiyot** reportedly participated in a Red Shirt protest during which the Government allegedly used violence. It is reported that Mr. Sitthiyot, upset with the violence, threw a series of objects to the river, including a monarchically-symbolic flag and that his actions were filmed and the video disseminated on television and the Internet, along with his personal details. An arrest warrant was issued by the police on 26 May 2010 for damaging public property and accusation of lèse-majesté. Mr. Sitthiyot left Thailand but returned to surrender to the police on 23 December 2010, out of concern for his family who had reportedly been enduring surveillance and harassment. The police charged him under article 112 of the Criminal Code. After reporting himself, Mr. Sitthiyot was granted release on bail. After his release, Mr. Sitthiyot started suffering from a sort of hemiplegia, a serious medical condition. He is unable to walk or talk and is unconscious most of the time. It is alleged that this serious medical condition resulted from the severe stress he suffered as a result from the charges brought

against him and the pressure on him and his family. After an appeal presented to the Public Prosecutor, the decision to bring charges was postponed on several occasions, including because of his medical condition. On 22 May, the Prosecutor finally submitted the case to the Provincial Court and on 4 September the Court decided to suspend the case for medical reasons and to review his condition on a regular basis to resume judicial proceedings as soon as his health condition would allow.

Ms. Saran Chuichai (also known as Aum Neko), a student and political and social activist, was interviewed in June 2013 for a talk show, albeit the interview was never broadcasted. On 16 September 2013, the show's host filed a complaint against Ms. Chuichai for lèse-majesté and, on 20 March 2014, the police allegedly decided to investigate the complaint and issued a summons to which Ms. Chuichai did not respond. Following the coup d'état, Ms. Chuichai was summoned by the NCPO order number 5 but failed to report herself for a second time. As a result, an arrest warrant was issued on 23 June 2014.

In 2006, **Mr. Assawin Esser Bird**'s business partner allegedly filed a lèse-majesté complaint against him, for having allegedly insulted the Crown Prince and for referring to his relation with the King. Mr. Bird reported himself to the police in December 2006, denied the allegations and was released on bail. In 2013, the Court of First instance declared Mr. Bird not-guilty, but the Court of Appeal overruled the first instance judgement and sentenced him for defamation to five years' imprisonment on 15 July 2014. On 18 July 2014, the Supreme Court temporarily released Mr. Bird on bail, pending his appeal.

Mr. Ekkapob Luara, a member of the Technical College Student Network for Democracy, delivered a public speech at a UDD rally on 27 November 2013, which was considered to be contravening article 112 of the Criminal Code. On 13 December 2013, an arrest warrant was issued against him. On 18 December, an explosive artefact was thrown to his house; Mr. Luara was absent at the time. On 4 January 2014, Mr. Luara left Thailand. Following the coup d'état, Mr. Luara was summoned on 5 June under the NCPO order number 49, but failed to report himself. On 23 June 2014, another arrest warrant was issued against him.

Mr. Wuthipong Kachathamkul, a Red Shirt activist and host of a radio programme that has criticised the military's involvement in politics, was interviewed on 7 April 2014 by an international TV channel. During the interview, Mr. Kachathamkul expressed his opinion with regards to the monarchy. On 9 April 2014, the Democrat Party reportedly filed a complaint for lèse-majesté, requesting that action be taken against him and that access to the video be blocked. The Royal Thai Police allegedly announced that those who shared the video would also be found in violation of article 112 of the Criminal Code and article 14 of the Computer Crime Act. On 11 April 2014, an arrest warrant was issued against Mr. Kachathamkul. Following the coup d'état, Mr. Kachathamkul was summoned under the NCPO order number 57. As he failed to report himself,

another warrant was issued on 13 June 2014 and the Ministry of Foreign Affairs revoked Mr. Kachathamkul's passport.

On 17 April 2014, the parents of **Ms. Chatwadee Amornpat** (also known as Rose), a British national and supporter of the Red Shirts living in the UK, allegedly following pressure and harassment, filed a lèse-majesté complaint against their daughter in relation to seven videos posted on the Internet, where she reportedly made comments referring to an unauthorised biography of the King. On 5 June 2014, Ms. Amornpat was reportedly summoned under the NCPO order number 49, but she did not return to Thailand to report herself. On 23 June 2014, the Bangkok Military Court approved arrest warrants for all those who failed to report to the NCPO. It is reported that calls were made for the Ministry of Foreign Affairs to revoke Ms. Amornpat's passport and seek her extradition to face the lèse-majesté charges in Thailand.

Cases of three persons sentenced and imprisoned under article 112 of the Criminal Code (also known as lèse-majesté law) and article 14 of the Computer Crime Act, for having allegedly exercised their right to freedom of opinion and expression:

Mr. Plutarin Thanaboriboonsuk was arrested on 16 March 2012 for having posted messages deemed offensive towards the King nine times, between July 2011 and March 2012. Whilst investigating the case, the police referred Mr. Thanaboriboonsuk for psychological assessment. Following the coup d'état, he was summoned under NCPO order number 44, reported himself and was detained by the military. On 16 June 2014, the Public Prosecutor indicted him under article 112 of the Criminal Code and article 14(3) of the Computer Crime Act. Mr. Thanaboriboonsuk pleaded guilty at the preliminary hearing on 30 June 2014, at which he also produced a medical certificate to request suspension of his sentence on the grounds of his psychological condition. On 16 July 2014, as requested by the court, his doctor testified of Mr. Thanaboriboonsuk's psychological condition but could not confirm whether these existed prior to the offences he had allegedly committed. Reportedly, on 31 July, Mr. Thanaboriboonsuk was sentenced to a total of 30 years imprisonment; under Article 112 for 27 years (3 years for each of 9 counts) and under Article 14(3) of the Computer Crime Act for 36 months (4 months for each of 9 counts). The sentence was then reduced to 15 years' imprisonment as a result of his guilty plea. The sentence was not suspended despite Mr. Thanaboriboonsuk's psychological condition. He is not appealing his conviction. Mr. Thanaboriboonsuk remains in detention at the Ubon Ratchathani Central Prison.

On 29 January 2014, **Mr. Yutthasak Kangwanwongsakul**, a taxi driver, had a lèse-majesté complaint filed against him by one of his passengers who had recorded a conversation they held in the taxi, where Mr. Kangwanwongsakul expressed his political opinions. On 2 June 2014, Mr. Kangwanwongsakul was arrested and detained. On 4 June 2014, the Criminal Court rejected his bail

request. On 8 August 2014, Mr. Kangwanwongsakul was sentenced to two years and six months' imprisonment; he has requested a royal pardon.

In March 2014, a Facebook user reportedly filed a complaint against **Mr. Akkaradech Eiamsa-art**, a university student, for having allegedly posted a message violating article 112 of the Criminal Code. On 18 June 2014, Mr. Eiamsa-art was arrested, his phone and computer were confiscated, and he was detained for two nights for interrogation. On 20 June 2014, the Criminal Court denied Mr Eiamsa-art's bail request. He pleaded guilty at his indictment on 30 September 2014 and was sentenced to two years and six months' imprisonment on 4 November 2014. He is not appealing his conviction.

Several communications have been addressed to your Excellency's Government referring to allegations similar to those presented in this communication, including on the application of article 112 of the Criminal Code and article 14 of the Computer Crime Act in relation to the exercise of the right to freedom of opinion and expression. These communications include: JUA THA 10/2014 (12/09/2014)*; JAL THA 8/2014 (19/08/2014)*; JAL THA 3/2014 (30/04/2014); UA THA 1/2014 (25/03/2014); .AL THA 13/2012 (14/12/2012)*; JUA THA 10/2011 (06/01/2012)*; UA THA 9/2011 (20/12/2011)*; UA THA 5/2011 (10/06/2011)*, (*answers were provided). We look forward to receiving responses to the communications that remain unanswered (JAL THA 3/2014 (30/04/2014) and UA THA 1/2014 (25/03/2014)).

We take note of the responses provided so far by your Excellency's Government, in particular to the letter sent on 4 July 2012 (in response to communication THA 9/2011) and to the letter sent on 26 December 2012 (in response to communication THA 13/2012), where the Government presented detailed arguments to justify the application of lèse-majesté law, including arguments based on the particular status of the King of Thailand and the necessity of lèse-majesté law under national security grounds and to preserve national unity and stability ([A/HRC/21/49](#), page 62 and [A/HRC/23/51](#), p.24; see also [A/HRC/14/23/Add.1](#), para.2369). In these responses, the Government also referred to the decision of the Constitutional Court of Thailand that reaffirmed the constitutionality of Section 112 of the Criminal Code establishing that this provision is "vital to the country's national security" ([A/HRC/23/51](#), p.24).

We disagree with this interpretation and reiterate our concerns about the inconformity of article 112 of the Criminal Code and article 14 of the Computer Crime Act with Thailand's international human rights obligations, as enshrined, among other, in article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a State party since 1996, and which guarantees the right to freedom of opinion and expression.

Grave concern is expressed about the charges, detention and disproportionate sentences, including long-term prison sentences and the intention to revoke national passports, imposed under articles 112 of the Criminal Code and article 14 of the Computer Crime Act for acts that seem to constitute a legitimate exercise of people's right to freedom of opinion and expression. We express further grave concern about the

chilling effect that these legal provisions, and defamation laws in general, have on the exercise of the right to freedom of opinion and expression in Thailand. In particular, we are concerned that these laws are used to muzzle dissenting opinions and expressions of discontent with the Government or the King, even more so since the military coup d'état of 22 May 2014. We also express concern about the recurrent denial of release on bail in cases of lèse-majesté, including in the case of persons suffering from serious medical conditions. We also express grave concern about the allegations relative to the lack of access to health services in detention.

Grave concern is also expressed about the trial of four of the persons mentioned above by military courts, especially as these courts do not allow appeals and their rules of procedure are often unclear. In this context, we are particularly concerned by the NCPO's announcement on 25 May 2014 according to which all lèse-majesté-related cases committed after that date fall under the jurisdiction of military courts, including when information shared and opinions expressed were done so before that date, but are still available through the Internet. Trials of civilians by military courts raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. In this context, we are further concerned about the lack of transparency in proceedings before military courts concerning lèse-majesté offences, where judges ordered, in some cases, the whole trial to be held in closed sessions, in contradiction with the right to a fair and public hearing, as enshrined, *inter alia*, in article 14 of the ICCPR.

Grave concern is also expressed about the justification of the application of lèse-majesté law under national security grounds, which do not seem to reach the threshold established by applicable international human rights law and standards.

Based on the allegations and concerns expressed above, we call on your Excellency's Government to take all necessary measures to repeal or amend article 112 of the Criminal Code and article 14 of the Computer Crime Act and bring these provisions in conformity with international human rights law and standards.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situations described above.

With no intent to express an opinion on whether or not the detention of the twenty-one individuals is arbitrary, the above allegations appear to be in contravention of the right not to be deprived arbitrarily of liberty as set forth in article 9 and 10 of the Universal Declaration of Human Rights (UDHR) and article 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR). Regarding the trial of civilians before military courts, we would like to refer your Excellency's Government to the report of the Special Rapporteur on the independence of judges and lawyers (A/68/285) on the issue, and where she explains that military tribunals should have jurisdiction only over military personnel who commit military offences or breaches of military discipline, and only when those offences or breaches do not amount to serious human rights violations.

In particular, we would like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR) and the specific conditions established under paragraph 3 that provides that restrictions may only be imposed for one of the grounds set out in subparagraphs (a) and (b) of paragraph 3; and they must conform to the strict tests of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. In this regards, we would like to draw the attention of your Excellency's Government to the Human Rights Committee's General Comment No. 34 in which it is stated that all public figures, including those exercising the highest political authority such as heads of State, are legitimately subject to criticism and political opposition. 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. *Lèse-majesté* and defamation laws should be crafted with care to ensure that they comply with paragraph 3 of article 19 and that they do not serve, in practice, to stifle freedom of expression. (CCPR/C/GC/34).

We further refer your Excellency's Government to articles 21 and 22 of the ICCPR.

In this regard, any restriction, including to the right to freedom of opinion and expression, 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, as established in 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.

We also wish to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 12.

Regarding the situation of those suffering from medical conditions, we would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. In addition, we would like to refer your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners, in particular to Rule 22(2)), referring to access to specialized treatment for sick prisoners; and to Rule 82 which establishes that persons suffering from mental health problems should not be detained in prisons, they should be treated in specialized institutions under medical management, and the medical psychiatric service of the penal institutions shall provide the necessary treatment.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information or comment you may have on the above-mentioned allegations.

2. Please provide detailed information on the charges and criminal proceedings against the persons mentioned above and explain how they are compatible with international human rights standards, in particular articles 9, 14, 19, 21 and 22 of the ICCPR.

3. Please provide detailed information on the cases mentioned above which are tried by military courts. Explain in particular how such cases and trials are compatible with international human rights standards, in particular article 14 of the ICCPR.

4. Please provide information on the legal grounds invoked for the military courts to hold the proceedings in closed-door in *lèse-majesté*-related cases and explain how such measures are in conformity with the right to a fair and public hearing as enshrined, *inter alia*, in article 14 of the ICCPR.

5. Please provide information on measures taken, or to be taken, to ensure that criminal sanctions are not imposed on cases related to the *lèse-majesté* or defamation offences and that civil or administrative sanction do not exert a chilling effect on the exercise of the right to freedom of opinion and expression. Please provide information on measures taken, or to be taken, to ensure that any restriction imposed on this right is consistent with article 19(3) of the ICCPR.

6. Please provide information on measures taken or to be taken, in order to repeal or amend the *lèse-majesté* law, namely article 112 of the Criminal Code, and article 14 of the Computer Crime Act, and to bring domestic legislation in conformity with Thailand's obligations under international human rights instruments such as the ICCPR.

7. Please provide information on the justification for the use of the *lèse-majesté* law in protecting Thailand's national security and how the existence of *lèse-majesté* law is related to a genuine purpose and demonstrable effect to protect the country's existence or its territorial integrity against the use of force.

8. Please provide information on the legal grounds invoked for the refusal of bail requests in the above-mentioned cases, including for persons suffering from serious

medical conditions, and how these are compatible with international standards, namely article 9 and 14 of the ICCPR.

9. Please provide information regarding the health conditions of Mr. Tanet Nonthakoat and Mr. Prasit Chaisrisa and the measures that have been taken to address their situations.

We would appreciate receiving a response within 60 days.

We take the opportunity to reiterate our readiness to provide technical assistance to your Excellency's Government, including through a country visit to Thailand by the Special Rapporteur on the promotion and protection of the right to freedom of opinion.

We also would like to kindly request that a copy of this letter be shared with General Prayuth Chan-ocha, Chief of the National Council for Peace and Order, and General Prawit Wongsuwan, Minister of Defense.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Michel Forst
Special Rapporteur on the situation of human rights defenders

Gabriela Knaut
Special Rapporteur on the independence of judges and lawyers