

Mandates 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

REFERENCE:
UA THA 1/2017

24 January 2017

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 Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of Mr. **Jatupat Boonpataraksa**, a student activist and human rights defender, for posts made online, and charges brought against him under the lèse-majesté provision of the Criminal Code and under the Computer Crime Act.

Mr. Jatupat Boonpataraksa is a student at Khon Kaen University and member of the Dao Din student activist group and the New Democracy Movement (NDM).

Concerns about the lèse-majesté provision of the Thai Criminal Code and the Computer Crimes Act to restrict freedom of opinion and expression have been raised in several communications to your Excellency's Government. These communications include: THA 13/2014; THA 10/2014; THA 8/2014; THA 3/2014; THA 1/2014; THA 13/2012; THA 10/2011; THA 9/2011; THA 5/2011. Concerns about arrest and detention of members of the NDM were raised in the following communications to your Excellency's Government: 7/2015 and 5/2016. We take note with appreciation of the responses provided to us to these communications, but remain concerned at the continued application of the lèse-majesté provision and the Computer Crimes Act in ways that are incompatible with international human rights law.

According to information received:

On 3 December 2016, Mr. Boonpataraksa was arrested by plainclothes police after he allegedly shared a BBC Thai news article "Profile: Thailand's new King Vajiralongkorn", as well as quoted some content of the news on his private Facebook page. The arrest warrant, dated 2 December 2016, stated that Mr. Boonpataraksa was charged under the lèse-majesté provision in Article 112 of the Thai Criminal Code and under the Computer Crimes Act.

Mr. Boonpataraksa was detained at a police station for one night and was denied access to counsel, despite Thai Lawyers for Human Rights having arranged for a network lawyer to offer Mr. Boonpataraksa legal assistance. He was informed of his charges under Article 112 of the Thai Criminal Code which states that

anyone who “defames, insults or threatens the King, the Queen, the Heir-Apparent or the Regent” shall be punishable by a maximum sentence of 15 years’ imprisonment, and under the Computer Crima Act, for imparting false information on the Internet. Mr. Boonpataraksa denied all charges.

Around 3.30 pm, on the same day, the police explained that Mr. Boonpataraksa would be taken and detained for investigation at another police station. The reason given was that this particular case concerned national security, and was a sensitive case and it could pose a great threat to the public safety and order if he was detained at the Khon Kaen Station.

The following day, on 4 December, the police brought Mr. Boonpataraksa to the Provincial Court to seek permission to have him remanded during investigation. The Court approved the police’s request to have Mr. Boonpataraksa remanded for 12 days, from 4-15 December 2016. Mr. Boonpataraksa requested bail and the Court allowed a bail bond of 400,000 baht (approximately 11,300 USD). Mr. Boonpataraksa was subsequently released.

On 16 December 2016, the police requested the court to revoke the bail for the main reason that Mr. Boonpataraksa, after his release on bail, reportedly had continued to express his opinion on social media to mock the state authority with his Facebook messages. The message posted on Facebook that was cited in the police’s motion to request revocation of the bail states that *“At first, I wanted to offer apologies to three friends who have just been charged for violating referendum law; they were required to pay 400,000 (baht as bail security). But (I did not), since I had done nothing wrong. I could not really apologize to them. #the economy is so bad, and they want my bail money”*.

On 22 December 2016, the Provincial Court of Khon Kaen held a hearing over the police’s request to have the bail revoked. The Court ordered a hearing behind closed doors, preventing trial observers from entering the court. The Court ordered to revoke the bail and have him detained during the pre-trial detention. On the same day, the lawyers of Mr. Boonpataraksa applied for provisional release. In a hearing on 27 December 2016, the Appeal Court of Region 4 upheld the order of bail revocation, stating that Mr. Boonpataraksa had not deleted his social online post and had continued to express himself through social media in a gesture to make a mockery of the State power showing disrespect for law, and causing damage to the nation. The Appeal court also stated that it was likely that he would continue with such expressions upon release.

Mr. Boonpataraksa is currently detained at the Khon Kaen Provincial Prison and if found guilty, he may face the maximum sentence of 15 years’ imprisonment.

We express concern at the arrest and detention of Mr. Boonpataraksa, and the charges brought against him under the lèse-majesté provision of the Criminal Code and under the Computer Crimes Act. The above allegations appear to be in contravention

with international law, in particular the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which Thailand ratified on 29 October 1996. We reiterate our concerns that these provisions represent a criminalization of legitimate expression and are therefore incompatible with Thailand's obligations under international human rights law. We moreover express concern that the court hearing concerning the revocation of bail took place behind closed doors in contradiction to the right to a fair and public hearing.

In its reply of 29 February 2016, referring to the application of the *lèse-majesté* law, your Excellency's Government states that this law is not aimed at curbing people's rights to freedom of expression, but gives protection to the rights or reputations of the King, the Queen, the Heir-apparent, or the Regent in a similar way libel law does for commoners.

In this regard, we recall the State's international obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that any limitation on the right to freedom of expression must be provided for by law; may only be imposed to obtain a legitimate objective as set forth in article 19(3) of the ICCPR; and must conform to the strict tests of necessity and proportionality.

We emphasize the inconformity of the application of article 112 of the Criminal Code and Computer Criminal Act with article 19 of the ICCPR. All public figures, including those exercising the highest political authority such as the heads of State, are legitimately subject to criticism and political opposition. As stated by the Human Rights Committee in General Comment no.34, 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 ICCPR. *Lèse-majesté* and defamation laws should be crafted with care to ensure that they comply with article 19(3) and that they do not serve, in practice, to stifle freedom of expression (CCPR/C/GC/34). We are also particularly concerned at the chilling effect that these legal provisions have on the legitimate exercise of the right to freedom of expression in Thailand.

We would also like to refer your Excellency's Government 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, 5 and 6.

We moreover appeal to your Excellency's Government to take all necessary measures to guarantee the right of individuals in detention not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR. We remain concerned about the recurrent denial of release on bail in cases of *lèse-majesté*, and we reiterate our concerns

at the practice involving closed trials in cases that are deemed to involve sensitive matters in the interest of public order, good morals or national security, which appear to be in contradiction to the right to a fair and public hearing, as enshrined in article 14 of the ICCPR.

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 Mr. Boonpataraksa 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 the details of the proceedings against Mr. Boonpataraksa and the legal basis upon which he was sentenced, and explain how these are compatible with the international norms and standards.
3. Please provide information of any measures taken to ensure the due process and fair trial rights of Mr. Boonpataraksa;
4. Please provide information about how the expressions made by Mr. Boonpataraksa on social media amount to "damage to the nation", justifying the denial of release on bail.
5. Please provide information about the justifications for the use of lèse-majesté provisions to protect Thailand's national security, and how the existence of the lèse-majesté law is related to a genuine purpose of, and demonstrates in effect, protecting the country's existence or its territorial integrity against the use of force.
6. Please provide information about any measures taken to repeal the lèse-majesté provision in article 112 and to revise the Computer Crime Act, in order to bring these provisions in conformity with international human rights law.

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.

We intend to publicly reiterate our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders