

**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 7/2017

22 December 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 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **continued use of the lèse-majesté legislation and article 14 of the Computer Crime Act for the criminalization of the legitimate exercise of freedom of expression in Thailand.**

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 1/2017; 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, yet we underline that the responses to THA 13/2014 and THA 9/2015 were preliminary and were not followed up with more substantive responses. We 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 the information received:

**The case of Mr. Wichai Thepwong**

On 15 December 2015, the Bangkok military Court issued an arrest warrant against Mr. Thepwong after receiving a call from an unidentified person, allegedly claiming that Mr. Thepwong created a fraudulent Facebook profile under the person's name and posted messages, photos and videos defamatory to the Thai monarchy. On 22 December 2015, Chiang Mai Police arrested Mr. Thepwong and confiscated three of his mobile phones as evidence. He was transferred to the Royal Thai Police's Technology Crime Suppression Division (TCSD) for further investigation before he was detained at Bangkok's Thung

Song Hong Police Station. He pleaded guilty on 22 May 2017 as he has been detained throughout the investigation process for over a year since December 2015. His lawyer submitted a statement for his guilty plea.

On 9 June 2017, Mr. Thepwong was convicted of 10 offences under article 112 of the Criminal Code and sentenced to 70 years of imprisonment by the Bangkok Military Court. The sentence was later reduced to 35 years after his guilty plea. His sentence is the harshest lèse-majesté conviction in Thailand to date. Journalists and observers were not allowed to attend the verdict hearing.

#### **The case of Mr. Tanat Thanawatcharanon (known as Tom Dundee)**

Mr. Tanat Thanawatcharanon is a singer, actor and activist affiliated with the United Front for Democracy against Dictatorship (UDD). He was the subject of a previous communication by Special Procedures sent on 8 December 2014 (THA 13/2014). We thank your Excellency's Government for the reply of 11 December 2014, acknowledging the receipt of the communication, but we regret that this initial response was not followed up with a more substantive reply. We remain concerned at the subsequent developments.

On 9 July 2014, Mr. Thanawatcharanon was arrested at his home and has been in custody ever since. On 11 March 2016, the Military Court dismissed his bail request of a 600,000 baht bond (approximately USD 18,042). After being imprisoned for almost two years, he pleaded guilty to the charges under the jurisdiction of the Criminal Court. On 1 June 2016, he was convicted by the Bangkok Criminal Court to 15 years imprisonment for three offences under article 112 of the Criminal Code and article 14 of the Computer Crime Act for speeches he made at Red shirt political rallies on 13 November 2013, which was published on YouTube. The Court decided to reduce the sentence to seven years and six months. He later pleaded guilty to the charges under the Military Court during a witness examination hearing on 21 June 2016.

On 11 July 2016, Mr. Thanawatcharanon was convicted of violating article 112 of the Criminal Code and article 14 of the Computer Crime Act, and sentenced to five years in prison by the Bangkok Military Court for publishing video clips critical of the monarchy from 6 November 2013 to 26 June 2014. The prison term was reduced to three years and four months due to his guilty plea. The verdict hearing held on 11 July 2016 was closed to the public.

#### **The case of Mr. Nguenkhun Udonkunakorn**

Mr. Udonkunakorn was the subject of a previous communication by Special Procedures sent on 25 February 2016 (THA 9/2015). We thank your Excellency's

Government for the reply of 29 February 2016 acknowledging the receipt of the communication, but we regret that this initial response was not followed up with a more substantive reply. We remain concerned at the subsequent conviction of Mr. Udonkunakorn.

On 29 January 2015, Mr. Udonkunakorn was arrested by plain-clothes military officers in Muang District of Samut Sakhon Province and taken to the 11th Infantry Regiment, Royal's Guard for a three day detention and interrogation. His bail request was rejected on 23 February 2015 in which the court cited the severe penalty under the law. On 24 April 2015, he was indicted by a military prosecutor along with 11 other suspects linked to the Banpodj Network. Following an attempt to fight the case, the Court filed a new case against him. On 21 June 2016, Mr. Udonkunakorn was convicted of violating article 112 of the Criminal Code and sentenced to ten years in prison, which was reduced to five years due to guilty plea. He was accused of publicizing the Banpodj Network's audio clips. The Bangkok Military Court delivered the sentence in a closed door session.

**The case of Ms. [REDACTED]**

On 19 June 2015, a group of military personnel from the 2nd Infantry Regiment, Royal's Guard, and police officers from the TCSD arrested Ms. [REDACTED] at her house in Samut Prakan Province. No arrest warrant was presented at the time of her arrest. Officers searched her house, confiscated her laptop and mobile phone, and took her to the 11th Military Circle. She was detained for five days before being remanded to the custody of the police.

On 24 June 2015, she appeared at a televised press conference organized by the police, confessing to the crimes for which she had been charged. The court rejected a bail request of a 400,000 baht bond (approximately USD 12,025) on 25 June 2015.

On 15 December, she was taken to the Bangkok Military Court for a closed-door trial without a lawyer present. She decided to plead guilty to all charges. The Military Court convicted her of violating article 112 and article 116 (sedition) of the Criminal Code. She was sentenced to 19 years imprisonment but the sentence was reduced to nine years and six months due to her guilty plea. She was charged with two counts under article 112 of the Criminal Code for posting two messages on Facebook and three counts of sedition for posting three messages on Facebook on 11 and 12 June 2015, which authorities interpreted to be a suggestion that a military counter-coup was underway against the military government led by Prime Minister Gen. Prayuth Chan-ocha. She is currently serving her sentence at the Central Women's Correctional Institution in Bangkok.

### **The case of Ms. Thipchaya Supanichsirikul**

On 18 February 2015, Ms. Supanichsirikul was arrested in Pathumthani Province. Officers took her to her house and confiscated two mobile phones and a tablet. She was reportedly taken to an undisclosed location for two nights and detained in a cell with four officers guarding in front. On 20 February 2015, she was taken to the TCSD for further interrogation and then to the Military Court for an authorization of a pre-trial detention. On 23 March 2015, her relatives filed a bail request with a 400,000 baht bond (approximately USD 12,025). However, the court dismissed the request due to flight risks.

On 14 July 2015, Ms. Supanichsirikul was convicted of violating article 112 of the Criminal Code and article 14 of the Computer Crime Act. The Bangkok Military Court handed down a sentence of ten years' imprisonment reduced to five years after her guilty plea. She was accused of being a member of the Banpdj Network. She allegedly shared the Network's clips on her own Facebook and was part of a group called "The Truth is Easily Understand When Found".

On 18 December 2016, a Royal Decree was issued pardoning her and she was released from the Central Women's Correctional Institution after serving one year and ten months in prison.

### **The case of Mr. Jatupat Boonpattaraksa (known as Pai Dao Din)**

Mr. Boonpattaraksa is a prominent student activist. He was the subject of a previous communication by Special Procedures sent on 24 January 2017 (THA 1/2017). We thank your Excellency's Government for the reply of 27 January 2017, but remain concerned at the subsequent conviction of Mr. Boonpattaraksa.

On 3 December 2016, Mr. Boonpattaraksa was arrested and the Khon Kaen Provincial Court granted him a 400,000 baht bail the following day. However, the court revoked his bail after 18 days and he was detained again from 22 December 2016. On 16 January 2017, the Khon Kaen Provincial Court rejected the request for a temporary release for him to take his final exams at Khon Kaen University on 17 and 18 January 2017. On 10 February, he was indicted under article 112 of the Criminal Code and article 14 of the Computer Act for sharing a news article on Facebook from a BBC Thai-language page titled "Profile: Thailand's new King Vajiralongkorn" and quoting an excerpt of the article.

On 22 February 2017, the Khon Kaen Provincial Court denied the seventh bail request with a 700,000 baht bond (approximately, USD 21,037). His bail requests have been rejected for ten times by the Khon Kaen Provincial Court. The appeals

to the Appeal Court Region 4 to consider his bail requests were rejected twice. His first witness hearing began on 3 August 2017 and the Court ordered it closed.

On 15 August 2017, Mr. Boonpattaraksa was convicted of violating article 112 of the Criminal Code and article 14 of the Computer Crime Act, and sentenced to five years in prison by the Khon Kaen Provincial Court. The Court reduced the prison term to two years and six months as he delivered a guilty plea. He confessed before the witness hearing took place on its third day and the Court handed down the verdict in the afternoon of the same day.

#### **The case of Mr. Yoswaris Chuklom**

Mr. Chuklom was the subject of a previous communication by Special Procedures sent on 25 February 2016 (THA 9/2015). We thank your Excellency's Government for the reply of 29 February 2016 acknowledging the receipt of the communication, but we regret that this initial response was not followed up with a more substantive reply. We remain concerned at the continued prosecution of Mr. Chuklom.

On 29 March 2010, Mr. Chuklom gave a speech at a political rally site of the UDD in Bangkok. Part of his speech was deemed defamatory to the monarchy. On 2 August 2011, he confessed and the verdict hearing was to be delivered on 29 August 2011. He later decided to withdraw his confession and defend his case. After the verdict of the Criminal Court and the Court of Appeal was delivered, he submitted a 700,000 baht (approximately USD 21,037) bail request of the Bangkok Criminal Court which was granted by the Supreme Court on 23 September 2014. The Supreme Court was set to render a verdict on 7 October 2016, but due to issues with delivering the summon order to Mr. Chuklom's address, neither Mr. Chuklom nor the prosecutor appeared at the court. The verdict hearing was postponed to 15 December 2016 and again to 7 March 2017, as Mr. Chuklom was not able to attend the verdict hearing. On 7 March 2017, Mr. Chuklom was convicted by the Supreme Court to two years for violating article 112 of the Criminal Code. The Supreme Court upheld the judgment made by the Bangkok Criminal Court on 18 January 2013 and by the Appeal Court on 1 May 2014. After the verdict hearing, he was taken to the Bangkok Remand Prison where he is currently serving his prison term.

#### **The case of Mr. Udomsak Wattanawaroachaiwathin**

Mr. Wattanawaroachaiwathin was the subject of a previous communication by Special Procedures sent on 25 February 2016 (THA 9/2015). We thank your Excellency's Government for the reply of 29 February 2016 acknowledging the receipt of the communication, but we regret that this initial response was not

followed up with a more substantive reply. We remain concerned at the subsequent conviction of Mr. Wattanawaroachaiwathin.

On 11 February 2014, Mr. Wattanawaroachaiwathin was indicted for selling a translation of the book “The Devil’s Discus”, by Rayne Kruger at a demonstration by People’s Alliance for Democracy at Lumpini Park on 2 May 2006. The book, claimed to contain six sections that constitute lèse-majesté was declared illegal by Thai authorities in 2006. On 17 April 2014, the Bangkok Criminal Court acquitted him of a charge in violation of article 112 of the Criminal Code because the prosecutors failed to prove that he knew that the book had defamatory content. On 22 April 2014, the Appeal Court overturned the earlier acquittal and delivered his sentence. On 15 September 2016, the Supreme Court convicted Mr. Wattanaworachaiwathin to two years imprisonment for violating article 112 of the Criminal Code. The Supreme Court verdict states that Mr. Wattanaworachaiwathin is an experienced bookseller and he should have known about the defamatory content of the book.

**The case of Mr. [REDACTED]**

Mr. [REDACTED] was the subject of a previous communication by Special Procedures sent on 25 February 2016 (THA 9/2015). We thank your Excellency’s Government for the reply of 29 February 2016 acknowledging the receipt of the communication, but we regret that this initial response was not followed up with a more substantive reply. We remain concerned at the subsequent conviction of Mr. [REDACTED].

On 11 December 2014, TCSD officers arrested Mr. [REDACTED] for posting alleged defamatory comments and pictures of the late King Bhumibol Adulyadej on 27 and 28 July 2013 on Facebook profile that he claimed was not his. On 9 March 2015, the Court proceeded with a secret trial with the image of the King on Mr. [REDACTED] phone and a testimony from one of the plaintiffs as primary evidence on the case. In the second case, he was accused of sending two emails with messages deemed defamatory to the King to Bangkok Bank under an online identity “Vincent Wang”. He was indicted under article 112 of the Criminal Code and article 14 of the Computer Crime Act on 28 January 2015 while in detention at the Bangkok Remand Prison during the Court’s proceedings of his first case. On 20 January 2016, Mr. [REDACTED] was convicted by the Bangkok Criminal Court of violating article 112 of the Criminal Code and article 14 of the Computer Crime Act and sentenced to six years. On 10 October 2016, in a second lèse-majesté case, the Bangkok Criminal Court sentenced him to an additional eight year. He is serving a total of 14 years imprisonment from two separate cases.

**The case of Mr. Jueseng Sae-kow (also known under his pen-name “Bundit Aneeya”)**

Mr. Sae-kow is a writer and social critic. He was the subject of communication THA 9/2015. We thank your Excellency's Government for the reply of 29 February 2016 acknowledging the receipt of the communication, but we regret that this initial response was not followed up with a more substantive reply.

On 26 November 2014, Mr. Sae-Kow was arrested by police officers while delivering a speech at a forum on political reform hosted by the Innovation Party. The complaint stated that the defendant said two sentences. The first sentence was about the separation of Thai society and the status of Royal Institution. In the second sentence, he asked about which political regime the Thai people want. He was released on a 400,000 baht bail (approximately USD 12,025).

On 19 February 2015, the Bangkok Military Court indicted Mr. Jueseng Sae-kow for violating article of the Criminal Code. On 31 March 2015, the Bangkok Military Court held a deposition hearing for Mr. Sae-kow during which he pleaded innocent. On 11 February 2016, a psychiatrist from the Galya Rajanagarindra Institute in Bangkok testified before the Court that he is suffering from chronic mental illness which causes him to have anxiety, strange logic and behave in bizarre ways. Despite this conclusion, the doctor said that he can still continue to stand on trial.

On 25 July 2017, Mr. Sae-kow denied the accusation when he delivered his testimony. The Bangkok Military Court scheduled a witness examination on 8 December 2017.

In a separate case, Mr. Sae-kow was detained for allegedly making comments about the Thai Monarchy and the new constitution drafting process at a seminar organized by the New Democracy Movement (NDM) at Thammasat University on 12 September 2015. Reportedly, he was summoned for an attitude adjustment session by the military and was released. However, police officers filed charges against him for violating article 112 and arrested him on 15 November 2016. He was detained at Bangkok's Chana Songkram Police Station for one night and at Bangkok Remand Prison for one night. The Bangkok Military Court denied his bail request on 16 November 2016, but later granted his bail on 17 November 2016.

Prior to the above two cases, Mr. Sae-kow was charged in 20015 with violating article 112 of the Criminal Code following a comment he had given in a seminar organized by the Election Commission of Thailand. In February 2014, the Supreme Court sentenced him to four years in prison. As he was found to have a

mental illness, the punishment was suspended for three years. Mr. Sae-kow has only one kidney and has to carry a urine drainage bag with him at all times.

#### **The case of Ms. Patnaree Charnkij**

On 6 May 2016, Ms. Charnkij, the mother of Mr. Sirawit Serithiwat, a young political activist, reported herself to the TCSD following an arrest warrant granted by the Bangkok Military Court. Police officials indicted Ms. Charnkij for failing to criticize or take action against a man who sent her Facebook messages allegedly containing comments that violate article 112 of the Criminal Code.

The officials alleged that a man sent the message to the Facebook account “Nuengnuch Chankij”, whom officials believed was Ms. Charnkij’s account. The said person wrote “Don’t criticize me for saying all these”, and the account “Nuengnuch Charnkij” replied with “ja”, a Thai expression of acknowledgement and the equivalent of “yes” or “alright”. The reply was considered to be an acknowledgement and agreement with the alleged posts made by the said man.

Ms. Charnkij denied all charges and requested bail. However, inquiry officials denied the bail citing the high penalty for the case. She was detained at the Thung Song Hong Police Station. On 8 May 2016, the Bangkok Military Court released Ms. Charnkij on a 500,000 baht (approximately USD 15,033) bail on condition that she does not travel abroad or participate in any political activity.

On 22 July 2016, the Bangkok Military Court officially indicted Ms. Charnkij for violating article 112 of the Criminal Code and article 14 of the Computer Crime Act.

On 14 December 2016, the Court held a closed deposition hearing. The Court hearing on her case is still continuing.

#### **The case of Ms. Nuttigar Worathaiwit and Mr. Harit Mahaton**

On 27 April 2016, Ms. Worathaiwit and Mr. Mahaton were detained and handed over to the TCSD on 28 April for charges under article 116 of the Criminal Code and article 14 of the Computer Crime Act. On 29 April, the Bangkok Military Court approved an additional arrest warrant on a charge under article 112 of the Criminal Code for allegedly sending messages deemed defamatory to the Thai Monarchy.

On 11 May 2016, Ms. Worathaiwit and Mr. Mahaton were brought to the Bangkok Military Court to request for their first provisional detention. The bail request of a 700,000 baht (approximately USD 21,037) was rejected on 19 May

2016 due to flight risks or evidence tampering. On 15 June 2016, the Military Court denied bail for the fifth time despite the deposit of a surety of one million baht. On 8 July 2016, after the Bangkok Military Court granted their bail requests of a 500,000 baht (approximately USD 15,033) surety, they were released from the Central Women's Correctional Institution and from Bangkok Remand Prison.

On 2 August 2016, the Bangkok Military Court indicted Ms. Worathaiwit for offences under article 112 of the Criminal Code and article 14 of the Computer Crime Act. Ms. Worathaiwit and Mr. Mahaton are among eight suspects accused of being paid to run an anti-government Facebook page called "We Love Gen. Prayuth" that is deemed to insult the military government and its leader, Prime Minister Gen. Prayuth Chan-ocha. If convicted, they may face up to 22 years of imprisonment.

#### **The case of Mr. Sarawut Wongsaranon**

On 21 July 2016, soldiers from the 37th Military Circle of Chian Rai province filed a complaint against Mr. Wongsaranon under article 112 of the Criminal Code. He was accused of posting two defamatory images deemed to be in violation of article 112. On 26 August 2016, police confiscated his electronic devices with a search warrant.

On 11 October 2016, the Chiang Rai Military Court granted the police a permission to detain Mr. Wongsaranon. Although his lawyer told the court that his client had to take care of his young sons, a bail request with a land title deed valued at 400,000 baht (approximately USD 12,025) was denied due to flight risk and the severity of the charges. On 17 November 2016, he was granted a 100,000 baht bail after having been detained for 38 days and refused bail on three occasions. On 29 December 2016, the Chiang Rai Military Court indicted Mr. Wongsaranon under article 112 of the Criminal Code and article 14 of the Computer Crime Act for defaming the then Crown Prince Vajiralongkorn.

On 11 April 2017, the Court held a preliminary hearing on the case. The trial will hear 10 plaintiff witnesses and four defendant witnesses. The first plaintiff witness hearing scheduled for 12 June 2017 was postponed twice to 13 September 2017 as the witness was not present. The case is still ongoing under the Chiang Rai Military Court.

#### **The case of Mr. Sao Saengmuang**

On 20 April 2016, the Bangkok Military Court indicted Mr. Saengmuang under article 112 of the Criminal Code for writing messages deemed defamatory to the Thai monarchy in a complaint he filed with the Supreme Court's Criminal

Division for Political Office Holders. He was arrested following a complaint by staff of the Supreme Court who claimed that certain messages contain references to the late King Bhumibol Adulyadej and the Thai monarchy. Mr. Saengmuang filed a complaint against former Prime Minister Thaksin Shinawatra alleging that Mr. Shinawatra had misallocated the property of the late King Bhumibol Adulyadej. Mr. Saengmuang claimed that he was in charge of managing seven billion baht (approximately USD 196 million). He also claimed that he had telepathic powers to communicate with Mr. Shinawatra and also the late King. His claims were deemed to contain references that are defamatory to the monarchy. A lawyer from the Thai Lawyers for Human Rights (TLHR) had requested that Mr. Saengmuang not be indicted due to his condition of psychosis. From 28 May 2015, he had been treated for his mental conditions at Galya Rajanagarindra Institute. However, following a conclusion by psychiatrists from the Galya Rajanagarindra Institute in December 2015 that Mr. Saengmuang was fit to stand trial in a military court, the prosecutors proceeded with the case. The Military Court granted him bail with a surety of 400,000 baht (approximately USD 12,025). Three witness examinations have taken place and the hearing is ongoing.

#### **The case of Mr. Siraphob Kornaroot**

Mr. Kornaroot was the subject of a previous communication by Special Procedures sent on 25 February 2016 (THA 9/2015). We thank your Excellency's Government for the reply of 29 February 2016, but remain concerned at the continued criminal prosecution of Mr. Kornaroot.

On 24 September 2014, Mr. Kornaroot was indicted under article 112 of the Criminal Code and article 14 of the Computer Crime Act for posting a drawing, an article and a poem on his personal blog and Facebook page under the pen name "Rung Sila" between 2009 and 2013. Besides the charge under article 112 of the Criminal Code, Mr. Kornaroot has also been indicted for defying the NCPO Order No. 41/2014 for not reporting to the military in June. On 25 November 2016, the Bangkok Military Court sentenced Mr. Kornaroot to two years suspended prison for violating the NCPO orders. As Mr. Kornaroot cooperated with the investigation process and had never committed a serious crime before, the Court ruled to reduce the sentence by two-thirds to eight months suspended sentence and a fine. Mr. Kornaroot is currently detained at the Bangkok Remand Prison as the court rejected his bail for the lèse-majesté case. The case under article 112 of the Criminal Code is still ongoing under the Bangkok Military Court.

#### **The case of Ms. Anchan Preeleert**

Ms. Preekert was the subject of a previous communication by Special Procedures sent on 25 February 2016 (THA 9/2015). We thank your Excellency's Government for the reply of 29 February 2016, but remain concerned at the subsequent conviction of Ms. Preekert.

In mid-April 2015, Ms. Anchan Preekert was indicted under article 112 of the Criminal Code and article 14 of the Computer Crime Act for allegedly posting various audio clips of Banpodj Network using different usernames on Facebook and YouTube. The clips were uploaded in the period 12 November 2014 – 24 January 2015. Ms. Preekert asserted that the accounts did not belong to her. She faces 29 offences under article 112 of the Criminal Code and article 14 of the Computer Crime Act. She was also accused for being responsible for the Banpodj Network's finances. She was detained for seven days before the police requested her detention from the Bangkok Military Court. Her 400,000 baht bail request (approximately USD 120,025) was rejected due to flight risk. Her case is ruled to be closed to the public. She was detained for a year before the first plaintiff witness examination took place on 24 January 2016. It is unclear how long Ms. Preekert will have to remain in prison before her trial is concluded. She is currently detained at the Central Women's Correctional Institution.

#### **The case of Mr. Prawet Praphanukul,**

Mr. Praphanukul is a Bangkok-based lawyer. On 29 April 2017, officials entered his house in the morning and took him directly to Bangkok's 11th Military Circle for interrogation. He was detained there five days before the Bangkok Criminal Court authorized his transfer to the Bangkok Remand Prison on 3 May 2017.

On 28 June 2017, the Court rejected his bail request for the sixth time and renewed his pre-trial detention period. He has been detained for almost four months since his arrest on 29 April 2017.

On 25 July 2017, the Bangkok Criminal Court indicted Mr. Praphanukul for violating article 112 and article 116 of the Criminal Code for sharing a Facebook post about the missing 1932 Revolution Plaque posted by Somsak Jeamteerasakul, an academic currently living in exile in France. He allegedly also posted 10 messages criticizing the monarchy and three messages with content that the authorities deemed would instigate social disorder. He was accused of ten counts under article 112 of the Criminal Code and three counts under article 116 of the Criminal Code. He was also charged under article 14 of the Computer Crime Act. He could face up to 50 years in prison if convicted.

#### **The case of Mr. Ruecha Klisuwan**

Mr. Klibsuan is a retired military sergeant.

On 29 March 2016, Mr. Klibsuan was arrested by approximately 20 officials from the Royal Thai Police, 11th Military Circle, TCSD and Royal Thai Navy at his house in Rayong Province. The officials cited Section 44 of the Interim Constitution, which empowers them to arrest individuals without a warrant for alleged violations of article 112 of the Criminal Code. The officials also confiscated Mr. Klibsuan's laptop, tablet and mobile phone. He was taken to the 11th Military Circle in Bangkok for interrogation and was detained for seven days.

On 4 April 2016, Mr. Klibsuan was handed over to the TCSD and charged with offences under article 14 of the Computer Crime Act and article 112 of the Criminal Code in relation to his Facebook comments deemed defamatory against the Queen and the Heir-apparent.

On 18 November 2016, the Bangkok Military Court granted him a 400,000 baht bail (approximately USD 12,025). In 2010, Mr. Klibsuan was diagnosed to be suffering from a mental disorder and various delusions consistent with schizophrenic behavior. The Court ruled to continue the proceedings on 27 December 2016 after Mr. Klibsuan's psychiatrist testified that he is fit to stand trial despite his continued treatment for his conditions.

#### **The case of Mr. Thanakorn Siriphaiboon**

On 8 December 2015, Mr. Siriphaiboon was arrested at his house in Samut Prakan Province by military and police officers who invoked Section 44 of the Interim Constitution. He was detained in a military camp for seven days before being taken to the Bangkok Military Court and formally accused of violating article 112 of the Criminal Code and article 14 of the Computer Crime Act. Military officers said that on 2 December 2015, Mr. Siriphaiboon had clicked "like" on a picture mocking Thong Daeng on Facebook. Thong Daeng, now deceased, was the late King Bhumibol Adulyadej's favourite dog. Allegedly, Mr. Siriphaiboon's actions defamed the Thai monarchy and threatened national security.

In another case, Mr. Siriphaiboon was accused of violating Article 116 of the Criminal Code for posting a series of infographics about the Rajabhakti Park corruption scandal in Prachuap Kiri Khan Province. The Court denied his bail request on grounds that the investigations are not completed.

On 29 February 2016, Mr. Siriphaiboon's lawyer submitted a letter to the Military Judge Advocate General's Office, calling for justice for his client. In the letter, he said his client should not have been charged under article 112 since the language

for the law reads “whoever defames, insults or threatens the King, Queen, Heir-apparent or Regent shall be punished with imprisonment of three to fifteen years”.

On 8 March 2016, the Bangkok Military Court granted bail to Mr. Siriphaiboon on a 500,000 baht (approximately USD 15,033) bond on a condition that he is not permitted to travel outside the country without an approval from the court. He has been detained 86 days before his release.

On 12 May 2016, military officers raided at least a dozen of houses in the central provinces of Samut Prakan and Chachoengsao, including the house of Mr. Siriphaiboon. The authorities reportedly confiscated his laptop and mobile phone during the search. Mr. Siriphaiboon could face up to 27 years in prison if convicted.

#### **The case of Mr. Sulak Sivaraksa**

Mr. Sivaraksa was the subject of a previous communication by Special Procedures of 14 December 2012 (THA 13/2012). We thank your Excellency's Government for the reply of 26 December 2012, but remain concerned at the continued criminal prosecution of Mr. Sivaraksa.

In October 2014, Mr. Sulak Sivaraksa gave a public speech entitled “Thai History: the Construction and Deconstruction”, at Thammasat University, in which Mr. Sivaraksa commented that King Naresuan who ruled the Ayutthaya Kingdom 400 years ago, was a cruel ruler and that the elephant battle between King Naresuan and the Burmese King was constructed. In 2014, senior military officials filed a case against Mr. Sivaraksa following his speech. On 9 October 2017, the police took Mr. Sulak Sivaraksa to the Bangkok Military Court to submit a case accusing him of violating article 112 of the Criminal Code. The hearing of the case is scheduled for 7 December 2017. In a separate case, Mr. Sivaraksa has been accused by a military officer for violating article 112 of the Criminal Code for criticizing King Rama V and King Rama VII during a seminar entitled “83 Years of Thailand's Development after the 1932 Revolution of Siam”. Investigations of this case is still ongoing.

#### **The case of Mr. Nithiwat Wannasiri**

In 2010, Mr. Wannasiri participated in anti-government protests organized by the UDD. He later joined the “Red Sunday Group” to demand accountability for the crackdown and compensation for civilians who had been injured during the violent repression of demonstrations in 2010. In 2011, he became member of a politically active musical band called “Fai Yen”. In 2010, a group of royalists at Bangkok's Kasetsart University, where Mr. Wannasiri was studying, reportedly

pressured university staff to file a lèse-majesté complaint against him at the Bangkok Metropolitan Police Division 2. In addition, another member of a royalist group based in Roi-Et Province filed several lèse-majesté complaints against him. Both complaints were related to his online comments on the Thai monarchy.

On 9 June 2014, Mr. Wannasiri was summoned to report to the military on 10 June 2014, together with 17 other individuals, including members of the Fai Yen group, academics, politicians and activists who actively expressed their opposition to the military coup. On 13 June 2014, the Bangkok Military Court approved an arrest warrant for Mr. Wannasiri for failure to comply with NCPO orders.

On 29 February 2016, the Roi-Et Provincial Court approved an arrest warrant requested by police officials from the Roi-Et Police Station against Mr. Wannasiri on charges under article 112. On 15 November 2016, three police officers from the Royal Thai Police's Special Branch specifically tasked with monitoring and gathering information related to violations under article 112 of the Criminal Code asked to meet with Mr. Wannasiri's mother. Officers reportedly told her to pass the message on to her son that he should stop his anti-government activism and surrender himself to Thai authorities.

We express grave concern at the continued use of article 112 of the Criminal Code and of the Computer Crime Act against the legitimate exercise of the right to freedom of expression in Thailand. We reiterate our concerns at the inconformity of the application of article 112 of the Criminal Code and Computer Criminal Act with article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Thailand on 29 October 1996, as these do not meet the strict tests of necessity and proportionality as required for restrictions to freedom of expression to be lawful under international law. In particular, we express concern at the prosecutions, detentions and the lengthy prison sentences imposed under article 112 of the Criminal Code and section 14 of the Computer Crime Act, for acts that appear to constitute a legitimate exercise of freedom of expression. We also express our concern at the trials of the above-mentioned individuals before military courts, and the lack of transparency in proceedings before such courts concerning lèse-majesté offences, where judges continue to order trials to be held in closed sessions, in some cases with no family members or public in attendance.

We reiterate that 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 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 furthermore 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](http://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 information on the charges and criminal proceedings against the individuals named above, and explain how these are compatible with international human rights standards, in particular articles 9, 14, and 19 of the ICCPR. Please also provide information about the legal grounds and justifications invoked for holding closed-door proceedings and explain how such measures are in conformity with the right to a fair and public hearing as enshrined in article 14 of the ICCPR.

3. Please provide information on the justifications for the use of lèse-majesté provisions to protect Thailand's national security and how the existence of such legislation is related to a genuine purpose of, and demonstrates in effect, to protect the country's existence or its territorial integrity against the use of force.
4. Please provide information on the legal grounds invoked for the refusal of bail requests in the above-mentioned cases.
5. Please provide information in relation to any steps taken in order to bring the Computer Crime Act and the Criminal Code into compliance 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.

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