

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL THA 2/2023
(Please use this reference in your reply)

5 May 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/4, 51/8 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention of [REDACTED] and the charges brought against her under section 112 (lèse-majesté) of the Criminal Code. The lèse-majesté legislation has been the subject of numerous observations and recommendations by international human rights bodies and mechanisms in recent years.

[REDACTED] is a 15-year-old child human rights defender who has advocated for the rights of students in school. Last year, she formed a group advocating for reforms of civil and political rights issues, including lowering voting age to 15. She has also advocated for the rights of individuals who are charged under lèse-majesté provisions for legitimately exercising their right to freedom of expression.

The charges that were lately brought against her relate to acts committed when [REDACTED] was 14-year old. According to the information received, she is the youngest individual known to be charged under the country's lèse-majesté legislation.

According to the information received:

On 28 March 2023, in the evening, [REDACTED] was arrested by eight police officers under the command of the Royal Palace Police Station's superintendent, in front of the Royal Palace Police Station. Reportedly, no warrant or other decision by a public authority to arrest [REDACTED] was presented to her. She was nonetheless first accused of "joining in" the illegal spraying by an artist activist of symbols representing anti-lèse-majesté-laws (numbers "112" in strikethrough) and anarchy (letter "A" in a circle) on the wall of the Temple of the Emerald Buddha, on that same day, on 28 March 2023. While being interrogated at the Royal Palace Police Station, she was restrained on the floor by several police officers. A police officer sat on top of her while other police officers restrained her arms and legs as they searched her.

About an hour after her arrest, she was presented an arrest warrant issued by the Central Juvenile and Family Court, dated 28 February 2023. The arrest warrant relates to two police summons [REDACTED] previously received in

connection to her conduct at a pro-democracy event on 13 October 2022. During that event, she allegedly made comments about the monarchy system, including that the monarchy system had no benefits, that people should have a say as to whether the monarchy system should continue to exist, and that people should remember those held in prison, seemingly for criticising the monarchy system. ██████████ is charged with three offences in relation to these acts: violation of section 112 (lèse-majesté) of the Criminal Code; violation of the Advertisement by Using Sound Amplifiers Control Act B.E. 2493; and violation of section 368 (failure to comply with officer's order) of the Criminal Code.

Since her arrest on 28 March 2023, ██████████ has been in pretrial detention. On 27 April, ██████████ pretrial detention was extended for 15 days, and the next hearing on her case will take place on 10 May 2023. She is currently detained at the Baan Pranee Juvenile Vocational Training Center for Girls in Nakhon Pathom Province, under the Juvenile Observation and Protection Center.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we are alarmed at the charges reportedly brought against child rights defender and peaceful demonstrator ██████████ for expressions she made when she was 14 years old. Nobody should be held criminally liable for their peaceful participation in an assembly, nor for the expression of their opinion in defence of human rights. Should these allegations be confirmed, they would be in violation of international human rights law, in particular the articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, which guarantee the right to freedom of opinion and expression and the right to freedom of peaceful assembly.

As stated by the Human Rights Committee in General Comment 34, 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 reiterate the recommendation of the Human Rights Committee which recommended your Excellency's Government to "review article 112 of the Criminal Code, on publicly offending the royal family, to bring it into line with article 19 of the Covenant" (CCPR/C/THA/CO/2, para. 18). We are notably concerned at the chilling effect that these legal provisions have on the legitimate exercise of the right to freedom of expression in Thailand.

Furthermore, we are worried about allegations of excessive use of force by the police during the interrogation of ██████████ on 28 March 2023.

We are issuing this appeal in order to safeguard the rights of abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the criminal charges brought against [REDACTED], and explain how these are compatible with articles 9, 14, 19 and 21 of the ICCPR. In the absence of such a legal basis, please provide information about the date of her release.
3. Please explain what measures have been taken to comply with recommendations from Human Rights Council's Special Procedures and the Human Rights Committee who both call upon your Excellency's Government to bring the lèse-majesté legislation into line with international standards related to freedom of expression. Please provide information in relation to any steps taken in order to bring article 112 of the Criminal Code into compliance with international human rights law standards

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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(s) responsible for the alleged violations.

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

Irene Khan

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

Matthew Gillett

Vice-Chair on Communications of the Working Group on Arbitrary Detention

Clement Nyaletsossi Voule

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, which guarantee the rights to freedom of expression and opinion and to freedom of peaceful assembly respectively.

We reiterate our concerns at the inconformity of the application of article 112 of the Criminal Code with international human rights norms. It is our view that the legislation is applied in a manner that does not meet the strict tests of necessity and proportionality as required for restrictions to freedom of expression to be lawful under international law. As underscored by the Human Rights Committee, States parties to the ICCPR are required to guarantee the right to freedoms of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. The Human Rights Committee clearly stipulated that lèse-majesté and "defamation laws must 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).

In this context, we reiterate our serious concerns about the lèse-majesté provision of the Criminal Code, as raised in several communications sent to your Excellency's Government in recent years. These communications include: THA 1/2023; THA 4/2022; THA 11/2020; THA 7/2017; 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. We also reiterate the recommendations made by the Human Rights Committee during Thailand's second periodic review in 2017, in which it called upon your Excellency's Government "to review article 112 of the Criminal Code, on publicly offending the royal family, to bring it into line with article 19 of the Covenant". (CCPR/C/THA/CO/2, para. 18).

We moreover appeal to your Excellency's Government to take all necessary measures to guarantee the right of [REDACTED] in detention 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.

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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international

levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Articles 5 and 6 of this Declaration are also relevant as they provide for the rights, individually or in association with others, at the national and international levels to meet, assemble peacefully; seek, obtain, receive and hold information on human rights including remedies to claim those rights; and freely publish and impart or disseminate to others view, information and knowledge on human rights.

We would like to bring to your attention the recent thematic report on the ‘protection of human rights in the context of peaceful protests during crisis situations’ of the Special Rapporteur on the right to freedoms of peaceful assembly and of association, which highlighted that “States should halt hostile rhetoric that stigmatizes peaceful protests, such as portraying them as destabilizing and as a threat. States must create an enabling environment, including by facilitating a dialogue with protesters and inclusive processes to ensure meaningful participation of all groups in society when seeking solutions for resolving a crisis” (A/HRC/50/42 para.78(a)). The Special Rapporteur also recommended States to “amend laws criminalizing certain forms of protests, such as those related to road blocking or critical infrastructure, to ensure that they do not unduly restrict peaceful protests or penalize or criminalize protestors, and ensure that any restrictions, including on civil disobedience, comply with the legality, legitimate purpose, necessity and proportionality requirements” (A/HRC/50/42 para.78(g)).