

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

Ref.: AL THA 4/2025
(Please use this reference in your reply)

20 February 2025

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; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 52/9, 52/4 and 55/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the prosecution of youth human rights defender Ms. Niraphorn Onkhao under section 112 of the Criminal Code of Thailand (lèse-majesté law), which appear to stem from her human rights work and the exercise of her right to freedom of expression.**

Ms. Niraphorn Onkhao is a 23-year-old youth human rights defender and pro-democracy activist, who has been active in the promotion of freedom of expression, gender equality and digital rights in Thailand. She is a member of the United Front of Thammasat and Demonstration, a student-led group advocating for monarchy reform. Since 2023, she has been taking part in Amnesty International's Digital Rights Champion project, focusing on online rights advocacy.

Special Procedures mandate holders have raised concern regarding the use of lèse-majesté legislation to criminalise human rights defenders, activists and critics for exercising their right to freedom of expression on several occasions in the past, most recently in THA 8/2024 and THA 4/2022. While we thank your Excellency's Government for the reply provided to THA 4/2022, we regret not receiving a reply to THA 8/2024. Concerns were previously voiced by Special Procedure mandate holders about alleged use of the Pegasus spyware to target human rights defenders and activists in Thailand in communication THA 1/2023. We thank your Excellency's Government for its acknowledgement of receipt of this communication and await to receive a comprehensive reply in due course.

According to the information received:

On 17 September 2021, at 7 a.m., officers of the Khlong Luang Provincial police station and of the Technology Crime Suppression Division (TCSO) of Thailand's Central Investigation Bureau searched the residence of Ms. Niraphorn Onkhao, following the issuing by the Thanyaburi Provincial Court of a search warrant authorizing the search of devices and other items associated with alleged criminal offences committed by the human rights defender. Ms. Niraphorn was asked to hand over her mobile phone, but she refused.

During the search, an arrest warrant issued by the Criminal Court of Thailand was presented to Ms. Niraphorn, accusing her of “inputting computer data that could threaten the Kingdom's security or constitute terrorism” under section 116 of the Criminal Code and section 14(3) of the Computer Crimes Act.

After the search, Ms. Niraphorn was brought to TCSD headquarters, where she was informed that a complaint had been filed under sections 112 and 116 of the Criminal Code, accusing the United Front of Thammasat and Demonstration of inciting violent protests and alleging that Ms. Niraphorn was the administrator of the student group’s Facebook page.

In November 2021, following another complaint, Ms. Niraphorn was summoned on charges under sections 112 of the Criminal Code and section 14(3) of the Computer Crimes Act. The accusations reportedly resulted from the publication of three posts, on 10 August 2020, 10 January 2021 and 6 October 2021, on the United Front of Thammasat and Demonstration’s Facebook page and her alleged role as administrator of the social media page. She reported to TCSD on 17 November 2021 to acknowledge the charges pressed against her, denying all of them.

On 24 November 2021, Ms. Niraphorn received an alert on her phone warning her that allegedly state-sponsored hackers might have targeted her device and been able to remotely access her communications, the phone’s camera and microphone, and other sensitive information. Following an examination of her phone, in July 2022, she received the confirmation that her device was attacked by the Pegasus spyware at least 14 times between February and June 2021, which is reportedly the highest number of recorded Pegasus attacks against one person in Thailand.

In 2022, Ms. Niraphorn was summoned again under section 112 of the Criminal Code and the Computer Crimes Act, following another complaint accusing her of posting a message violating such provisions. On 7 March 2022, she acknowledged the charges by reporting to TCSD, again denying accusations. She was given one month to submit a written statement.

On 19 April 2022, Ms. Niraphorn was summoned to appear before the prosecutor in relation to the first case presented against her under section 112 of the Criminal Code.

On 18 April 2023, she was indicted before the Criminal Court of Ratchada in the second case under section 112 of the Criminal Code and the Computer Crimes Act, which had been brought against her in 2022. During the court proceedings, she was granted bail pending trial. The Court is expected to issue its verdict in this case between April and May 2025. If found guilty under section 112, Ms. Niraphorn might face between 3 and 15 years in prison.

On 12 March 2024, Ms. Niraphorn spoke at the 55th session of the United Nations Human Rights Council in Geneva during the Interactive Dialogue with the Special Rapporteur on the situation of human rights defenders. On 11-15 April 2024, Ms. Niraphorn took part in the Digital Rights Youth Summit in

Buenos Aires, hosted by Amnesty International.

Upon her return to Thailand on 18 April 2024, her lawyer informed her that the first case presented against her in 2021 under section 112 of the Criminal Code would be brought to court on 21 April 2024. The investigation file had reportedly been submitted to the prosecutor on 19 April 2022, remaining pending for over two years. The hearing eventually took place on 29 April 2024, and Ms. Niraphorn was formally charged by the Criminal Court of Ratchada, which ordered her prosecution under section 112 of the Criminal Code and the Computer Crime Act. She was granted bail during the court proceedings. On 23 September 2024, the Court set the dates for the witness and evidence examinations, which are scheduled to take place on 26-29 August 2025. If found guilty, Ms. Niraphorn might face between 3 and 15 years in prison for each of the three messages that were posted on the United Front of Thammasat and Demonstration's Facebook page in 2020-2021, for a total of 9 to 45 years.

Without prejudging the accuracy of these allegations, we would like to express our concern about the prosecution of Ms. Niraphorn, which we fear might be linked to her human rights work and the exercise of her right to freedom of expression. We urge the Government of Thailand to put an end to the use of the Criminal Code, and particularly its provisions on lèse-majesté (section 112), to target the peaceful and legitimate work of human rights defenders, activists and dissidents or critical voices in the country. We reiterate our call to your Excellency's Government to repeal section 112. In addition to such repeated calls by Special Procedures mandate holders, the Human Rights Committee and other international mechanisms have also urged for this provision to be repealed as it is incompatible with international law and Thailand's international obligations.

We further wish to voice concerns about the reported attack on the device of Ms. Niraphorn with the Pegasus spyware. Our serious concern about the information received is aggravated by the fact that this does not seem to be an isolated incident, with several human rights defenders, activists and critics in Thailand having allegedly been subject to surveillance through the use of this spyware (as reported in THA 1/2023).

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 detailed information on the factual and legal basis of the charges brought against Ms. Niraphorn. Please indicate how these charges are compatible with international human rights law and standards, including in relation to freedom of expression.

3. Please also indicate the measures taken to ensure Ms. Niraphorn's right to a fair trial. Please explain how these measures are compatible with applicable judicial guarantees under obligations to respect human rights and international law. If no such measure has been taken, please explain how this is compatible with Thailand's international human rights obligations.
4. Please provide information about the measures which have been taken, or which are foreseen, to ensure full and impartial, effective, thorough and independent investigations into privacy violations in light of allegations of hacking and use of spyware against Ms. Niraphorn, in connection to her human rights defense work. If available, please provide details on the results of the investigations.
5. Please also provide information on the plan that your Excellency's Government has to prevent and protect individuals and groups from similar attacks and on the measures in place to ensure the protection of their right to privacy.
6. Please provide information on the measures in place or the steps taken by your Excellency's Government to ensure that human rights defenders and civil society actors are able to exercise their freedom of expression and carry out their work in a safe and enabling environment, including online, without fear of judicial harassment, surveillance, or any other intimidation, threats or reprisals.

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

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Ana Brian Nougrères
Special Rapporteur on the right to privacy

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to articles 2, 17 and 19 the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, which recognize the enjoyment of rights without distinction of any kind and guarantee the right to privacy and the right to freedom of opinion and expression. These rights are enshrined also in articles 2, 12 and 19 of the Universal Declaration of Human Rights (UDHR).

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right "to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media". This right applies online as well as offline, protects the freedom of the press as one of its core elements and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

In its [general comment No. 34](#), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse" (CCPR/C/GC/34, para. 11).

The Committee asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23). Recognizing how journalists and persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers, are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that "all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress" (para. 23).

The Committee further noted that prosecuting journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated information of legitimate public interest that does not harm national security is not compatible with paragraph 3 of article 19 of the ICCPR. Additionally, the Committee underlines that "defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression" (para. 47).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving "in

specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (CCPR/C/GC/34, para. 35). The Human Rights Committee recalled that the relation between right and restriction and between norm and exception must not be reversed. In this regard, the Human Rights Committee stated that the restrictions must be “the least intrusive instrument among those which might achieve their protective function”. ([CCPR/C/GC/34](#), para. 34).

In its resolution 12/16, the Human Rights Council called on States to refrain from imposing restrictions that are not consistent with article 19(3), including: discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups ([A/HRC/RES/12/26](#)).

Article 17 of the ICCPR protects the right to privacy and provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence. In relation to the facts set out above, it is pertinent to recall that the Human Rights Committee affirmed in its Concluding Observations to the report presented by Bulgaria (CCPR/C/BGR/CO/3, para. 22) that, in the context of the right to privacy, the protection of “correspondence” includes telephone communications. The General Assembly also emphasized that unlawful or arbitrary surveillance as a highly intrusive act, which violates the right to privacy and may contradict the tenets of a democratic society’ (A/RES/68/167). We also refer to General Assembly’s resolution 73/179, which noted that surveillance of digital communications must be consistent with international human rights obligations and must be conducted on the basis of a legal framework, which must be publicly accessible, clear, precise, comprehensive and non-discriminatory.

We would also like to bring to your attention the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 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.

Additionally, we would like to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5, which provides that everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully, to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- Article 6 (b) and (c), which state that everyone has the right, individually and in association with others, to freely to publish, impart or disseminate

to others views, information and knowledge on all human rights and fundamental freedoms, and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- Article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.