

**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 3/2024

(Please use this reference in your reply)

13 March 2024

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 52/9, 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 long-term sentence of 50 years in prison recently handed down to Mr. Monghkon Thirakot.**

Mr. Thirakot is an online clothes seller and pro-democracy and human rights activist from Chiang Rai Province in Northern Thailand. Since 2020, he regularly participates in peaceful, pro-democracy demonstrations. At protests and on social media, he was also openly critical of the Thai monarchy and outspoken about the importance of protecting the right to freedom of expression in Thailand.

According to the information received:

*Case 1 (Black Case No. Aor. 593/2564)*

Between 2-11 March 2021, Mr. Thirakot shared multiple videos on his Facebook account. The videos included two episodes from John Oliver's "Last Week Tonight" show mocking the Thai King, his wife and their pet; a US satirical Fox-animated series "American Dad" depicting cartoon characters stealing items from the King, and the BBC documentary about the Thai royal family "The Soul of the Nation".

On 1 April 2021, an investigation was launched into Mr. Thirakot accusing him of posting messages and images that were insulting, defamatory and/or threatening toward the King and Queen. The National Security Investigation Division appointed a committee to investigate these allegations in response to evidence gathered by the Chiang Rai Provisional Police Division.

On 12 April 2021, Mr. Thirakot began a hunger strike campaign in front of Ratchadaphisek Criminal Court in Bangkok calling for the release of political prisoners detained as a result of their participation in pro-democracy movements and convicted under section 112 (lèse-majesté) of the Criminal Code.

On 14 April 2021, the fourth day of the hunger strike campaign, police officers arrested Mr. Thirakot for allegedly violating section 112 of the Criminal Code

and sections 14(3) and 14(5) of the Computer Crimes Act B.E 2550 (2007). Upon his arrest, the police confiscated his mobile phone and brought him to Phahonyothin Police Station.

In the early hours of 15 April 2021, Mr. Thirakot was transferred to Mueang Chiang Rai Police Station. Later that morning, the police officers allegedly took Mr. Thirakot to a house in the Chiang Rai province, and seized items including a written paper, statements from the People's Party, a red ribbon and an armband with a three-finger salute. His lawyers were not informed by the authorities about this transfer and Mr. Thirakot was denied seeing the search warrant.

Later that day, Mr. Thirakot was returned to Mueang Chiang Rai Police Station and charged under section 112 of the Criminal Code and sections 14(3) and 14(5) of the Computer Crimes Act, with bail amounting to THB 250,000 (approximately USD 7,000). Despite his lawyers presenting the full amount and the inquiry official requesting his provisional release, Mr. Thirakot was denied bail by the superintendent.

On 16 April 2021, the Court granted him bail and ordered his provisional release at TBH 150,000 (approximately USD 4,200).

On 8 July 2021, Mr. Thirakot was indicted under section 112 of the Criminal Code and sections 14(3) and 14(5) of the Computer Crimes Act in absentia due to Covid-19 restrictions.

On 25 August 2021, following the reading of the indictment order to Mr. Thirakot in court, Mr. Thirakot's father filed a request for the provisional release of Mr. Mongkhon Thirakot's at THB 150,000 (approx. USD 4,200). At approximately 3:00 p.m., the Chiang Rai Provincial Court granted the request and ordered the provisional release of Mr. Thirakot, with the conditions that he not engage in any conduct that would tarnish the monarchy institution, not travel outside the country, and must report to court as per his appointment.

*Case 2 (Black Case No. Aor. 630/2564)*

Between 8-9 April 2021, Mr. Thirakot published two posts on his Facebook account that allegedly insulted, defamed and/or threatened the King and Queen. (case 2). These posts were discovered following Mr. Thirakot's arrest on 14 April 2021.

On 2 May 2021, Mr. Thirakot was arrested at his residence in Chiang Rai, detained at the Muang Chiang Rai Police Station and the next day charged under section 112 of the Criminal Code and sections 14(3) and 14(5) of the Computer Crimes Act.

On 3 May 2021, the Chiang Rai Provisional Court ordered his detention during investigation on the "serious circumstances and high penalties". Upon Mr. Thirakot's bail request, he was provisionally released later that day at TBH 150,000 (approximately USD 4,200).

On 23 July 2021, Mr. Thirakot was again indicted in absentia due to Covid-19 restrictions under section 112 of the Criminal Code and sections 14(3) and 14(5) of the Computer Crimes Act. On 25 August 2021, he was provisionally released on bail at TBH 150,000 (USD 4,200).

*Mr. Thirakot's trial*

In response to the defence's request, the Chiang Rai Provincial Court combined trials in case 1 and case 2 as the two cases related to similar offenses. In total, Mr. Thirakot was indicted for 27 counts of lèse-majesté.

On 19 April 2022, following the first round of witness hearings, the Court ordered that Mr. Thirakot's trial be held in secret for the "purpose of public order or good morals". Only the public prosecutor and Mr. Thirakot's attorney could be present during the witness hearing.

On 26 January 2023, the Court found Mr. Thirakot guilty of 14 counts of lèse-majesté and sentenced him to 42 years in prison (3 years for each count). The sentence was reduced to 28 years in light of Mr. Thirakot's testimony during the trial. This is the longest sentence imposed by any court in a lèse-majesté case since 2020. Later that day, Mr. Thirakot was released on strict condition at TBH 300,000 (approximately USD 8,400).

On 23 August 2023, Mr. Thirakot filed an appeal against the judgement. On 18 January 2024, the Court of Appeals Region 5 found Mr. Thirakot guilty of 11 additional counts of lèse-majesté and sentenced to a reduced sentence of 22 years in prison. These charges were based on Facebook posts dismissed by the Chiang Rai Provincial Court.

When combined, Mr. Thirakot's total prison term now stands at 50 years, making it the longest prison sentence imposed by any court ever in a lèse-majesté case. Mr. Thirakot is currently detained at the Chiang Rai Central Prison. He intends to appeal the Court of Appeals judgement in the Supreme Court.

*Case 3 (Black Case No. Aor 1278/2565)*

On 28 and 30 July 2022, Mr. Thirakot published two posts on his Facebook account that allegedly insulted, defamed and/or threatened the King. On 11 August 2022, more than 20 police officers searched Mr. Thirakot's house and arrested and charged him under section 112 of the Criminal Code and sections 14(3) and 14(5) of the Computer Crimes Act. During the search, police seized t-shirts deemed 'critical of the monarch' and Mr. Thirakot's mobile phone.

Mr. Thirakot remained in detention at Muang Chiang Rai Police Station from 11-13 August 2022. On 13 August, the Chiang Rai Provincial Court ordered the detention of Mr. Mongkhon Thirakot for 12 days at the request of the authorities. The Court later granted his provisional release on bail at TBH 150,000 (approximately USD 4,200).

On 30 October 2023, the Court found Mr. Thirakot guilty of two counts of lèse-majesté and sentenced him to a reduced sentence of four years in prison. The Court also added six months to his sentence, from another case in which he was convicted of trespass and given a suspended 6-month prison term. The Court ordered that the prison sentence in Case 3 be counted following the conclusion of the prison term imposed on Mr. Thirakot in Case 1 and Case 2.

While awaiting bail, Mr. Thirakot spent the night of 30 October 2023 in Chiang Rai Central Prison, where he was allegedly subjected to harassment and violations by the authorities, who reportedly threatened to hit him, ordered him to sit down and remove his clothes for a security check, while one officer destroyed his clothes with a knife, and an officer told him not to speak about the harassment against him.

On 31 October 2023, Mr. Thirakot was provisionally released on bail at 300,000 (approximately USD 8,400). This third case against him is pending appeal.

We are alarmed at the heavy 50-year prison sentence handed down to Mr. Thirakot, which appears to be in retaliation of his political activism online and offline, and the expression of his opinion about the Thai Monarchy. We are concerned at what appears to be a systematic pattern of harassment and targeting against Mr. Thirakot as a result of him exercising his right to peaceful assembly online and offline and exercising his right to freedom of expression. We are also concerned that a third case against Mr. Thirakot is pending and may carry heavy penalties.

We are concerned at the apparent abuse of the lèse-majesté provisions to deter and silence critics, political opponents, journalists, civil society actors and human rights defenders and other individuals wishing to express themselves critically about public affairs, including the monarchy. We express further concern that the above allegations seem to follow a pattern against dissent, characterized by, inter alia, arbitrary detention and legal proceedings against, and severe punishments of political, democratic and human rights activists and journalists affiliated with the pro-democracy movement in the country. The extraordinarily high punishment of Mr. Thirakot will have a severe chilling effect on the rights to freedom of peaceful assembly and the right to freedom of expression in Thailand, in particular in relation to political expression, including criticism of the Monarchy. In this regard, we wish to remind your Excellency's Government that the Human Rights Committee in general comment 34 has expressed concern regarding laws prohibiting criticism of political authority, including lese majesty laws, defamation of the head of state, disrespect for authority and the protection of the honour of public officials. We reiterate that all public figures, including those exercising the highest political authority such as heads of state and government, should not be immune to criticism and political opposition (General Comment No. 34) We reiterate our concerns raised in previous communications [AL THA 2/2023](#) and [AL THA 1/2023](#) regarding the inconformity of the application of article 112 of the Criminal Code with international human rights norms, in particular its incompatibility with article 19 of the International Covenant on Civil and Political Rights (ICCPR). We recall that the Working Group on Arbitrary Detention (WGAD) has continuously found that the use of section 112 is inconsistent with Thailand's international obligations, particularly article 19 of the ICCPR.

Finally, we are concerned about the allegations of harassment against Mr. Thirakot while in detention, which appear to be in violation of the international human rights standards enunciated in the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

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 explain the factual and legal basis for the criminal charges brought against and the prison sentence imposed on Mr. Thirakot, and specifically how they comply with international human rights norms and standards including article 9, 19, 21 of the ICCPR relating to the right to the liberty and security, the right to freedom of expression and the right to peaceful assembly. In the absence of such a legal basis, please provide information about the date of his release.
3. In May 2023, UN Special Rapporteurs on freedom of opinion and expression and on freedom of peaceful assembly and of association, along with the Working Group on Arbitrary Detention, recommended that Thailand review section 112 and bring it in line with article 19 of the ICCPR. Please indicate what measures your Excellency's Government has taken in order to bring lèse-majesté legislation 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 also 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.

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

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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, freedom of peaceful assembly respectively, the right to liberty and security of a person and the right to a fair trial and due process.

In its general comment no. 34 (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of 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 referred to above as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. Further, the Human Rights Committee made clear that "It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information". In paragraph 23, the Human Rights Committee has recognized that those "persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports", are "frequently subjected to threats, intimidation and attacks because of their activities." The Committee has urged States parties to protect against attacks aimed at silencing those exercising their right to freedom of expression.

Furthermore, we also wish to reiterate the principle enunciated in Human Rights Council resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on 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. Freedom of expression must be guaranteed online as well as offline.

We reiterate our concerns regarding 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 expressed concern regarding laws prohibiting criticism of political authority, including lese majesty laws, defamation of the head of state, disrespect for authority and the protection of the honour of public officials. All public figures, including those exercising the highest political authority such as heads of state and government, are

legitimately subject to criticism and political opposition (CCPR/C/GC/34). “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). The Human Rights committee also stated that States parties should consider the decriminalization of defamation 113 and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty (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 2/2023; 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).

Further, we refer to articles 21 and 22 of the ICCPR, which guarantee the rights to freedom of peaceful assembly and of association. The Human Rights Council has emphasized that States have the obligation to respect and fully protect these rights online as well as offline.<sup>1</sup> The General Assembly has also called upon all States to “ensure that the same rights that individuals have offline, including the rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in accordance with human rights law”.<sup>2</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and association has repeatedly recognized that digital technology is integral to the exercise of the rights of peaceful assembly and association.<sup>3</sup> Technology serves both as a means to facilitate the exercise of the rights of assembly and association offline, and as virtual spaces where the rights themselves can be actively exercised.<sup>4</sup> States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards. This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2(1)) of the International Covenant on Civil and Political Rights.

We also refer your Excellency’s Government to article 3 of the Universal Declaration of Human Rights (UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR), which state that everyone has the right to liberty and security of person. Article 9 of the UDHR and article 9 of the ICCPR further states that no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. According to deliberation no. 10 on reparations for arbitrary deprivation of liberty of the Working Group on Arbitrary Detention, all victims of arbitrary deprivation of liberty are entitled to an enforceable right before the

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<sup>1</sup> See Human Rights Council resolution 38/7.

<sup>2</sup> See General Assembly resolution 73/173.

<sup>3</sup> See A/HRC/20/27, A/HRC/38/34, and A/HRC/41/41

<sup>4</sup> A/HRC/29/25/Add.1, para. 53 and A/HRC/41/41 para 10 – 11.



competent national authority to prompt and adequate reparations, which should be proportional to the gravity of the violations and the harm suffered. Additionally, as per the jurisprudence of the Working Group on Arbitrary Detention and general comment no. 35, detention of an individual as punishment for the legitimate exercise of rights guaranteed by the Covenant is arbitrary. (CCPR/C/GC/35)

We also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14(1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent, and impartial tribunal established by law. This is particularly relevant as gendered forms of online discrimination in practice harm or hinder women's access to equality before courts and tribunals.

Finally, we would like to refer your Excellency's Government to 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.