

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA
THA 9/2015:

25 February 2016

Excellency,

We have the honour to address you in our capacity as First Vice-Chair of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 24/7, 25/2, 24/5, 24/6, 25/18, and 26/7.

In this connection, we would like to bring the attention of your Excellency's Government to information we have received **concerning the investigation, charges against, detention and/or conviction of 26 persons for alleged crimes of lèse-majesté, including 15 individuals who are being tried by military courts.**

The 26 persons concerned are: **Mr. Opas Chamsuksai, Mr. Thiansutham Sutthijittaseranee, Mr. Hasadin Uraipaiwan, Mr. Wittaya Wongpoe, Mr. Samak Pantae, Mr. Phongsak Sribunpeng, Ms. Sasiwimol Patomwongfa-ngarm, Mr. Siraphob Kornaroot, Mr. Juesong Sae-kow, Mr. Nguenkhun Udonkunakorn, Ms. Anchan Preekert, Mr. Prajakchai Chumkam, Ms. Jaruwan Eiampong, Mr. Anon Masin, Mr. Chartchai Maneerat, Mr. Ekkachai Hongkangwan, Mr. Yossawaris Chuklom, Mr. Prasit Chairsisa, Mr. Patiwat Saraiyaem, Ms. Porntip Munkhong, Mr. Udomsak Wattanaworachaiwathin, Mr. Chaleaw Chankiat, Mr. Piya Jullakittipan, Mr. Tanapon Bumrungsuk, Mr. Jaran Ditapichai, and Mr. Sombat Boonngam-anong.** The case of Ms. Porntip Munkhong has been reviewed by the Working Group on Arbitrary Detention. The advanced unedited version of the

Opinion 43/2015 concerning Ms. Munkong was sent to your Excellency's Government on 18 January 2016.

According to the information received:

Criminal proceedings before military courts

On 25 May 2014, the National Council for Peace and Order (NCPO) announced that the jurisdiction of military courts had been extended to try civilians in certain types of criminal cases, such as monarchy-related criminal cases. As a result, since the 22 May 2014 coup d'état, individuals who are being investigated under the lèse-majesté law are reportedly being tried before military courts.

Furthermore, it is reported that prosecution before military courts does not provide all the necessary guarantees of due process and fair trial. Military courts are alleged to systematically deny bail requests, without providing legitimate justifications. As a result, many of the accused, who initially planned to claim their innocence before the court, allegedly resorted to pleading guilty out of fear they could spend a significant period of time in prison before a verdict is delivered. Moreover, judges and prosecutors at the military courts reportedly do not meet standards of independence and competency to deal with cases concerning civilians. A significant increase in the number of lengthy prison sentences under article 112 of the Thai Criminal Code (also known as the lèse-majesté law) and section 14 of the Computer Crime Act handed down by military courts has been reported, including two cases of prison terms of 56 and 60 years, later halved to 28 and 30 years respectively. It is also alleged that, as provided by article 61 of the Organization of Military Court Act, the right to appeal to a higher court is not guaranteed for the period of the imposition of the Martial law (between 20 May 2014 and 1 April 2015).

It is also reported that the number of in-camera trials for individuals tried by military courts has been increasing. Hearings are held in closed sessions, including family members of the accused are reportedly prohibited from attending the hearings.

Cases of seven persons convicted and sentenced to imprisonment by a military court under article 112 of the Criminal Code (also known as lèse-majesté law) and/or section 14 of the Computer Crime Act, for having allegedly exercised their right to freedom of opinion and expression:

On 20 March 2015, **Mr. Opas Chamsuksai** was convicted of violating article 112 of the Criminal Code and sentenced to 1 year and 6 months imprisonment by the Bangkok Military Court. Mr. Chamsuksai had been arrested on 15 October 2014 after allegedly writing messages criticizing the NCPO and making references to the King on a bathroom wall at Seacon Square mall in Bangkok. Between October 2014 and March 2015, the Bangkok Military Court denied Mr. Chamsuksai's requests for bail on the basis of the alleged severity of his case. In early March 2015, his wife wrote a letter to the court asking it to exercise its discretion in its decision because of Mr. Chamsuksai's poor health.

When he asked the prison staff regarding his treatment, he was informed that the prison does not have adequate equipment to treat his condition. In the verdict, the court reasoned that the crime affected the public morals and hurt the feelings of Thai people. Given that the trial took place during the imposition of the Martial law, Mr. Chamsuksai could not appeal his conviction and sentence before a higher court. Mr. Chamsuksai, who is serving his sentence at Bangkok Remand Prison, remains under investigation under the lèse-majesté law for writing similar messages on another bathroom wall in the same mall.

On 31 March 2015, **Mr. Thiansutham Sutthijittaseranee** was convicted of violating article 112 of the Criminal Code and section 14 of the Computer Crime Act and sentenced to 25 years in prison by the Bangkok Military Court for allegedly posting five comments deemed defamatory to the King on his Facebook account. The Bangkok Military Court sentenced him to 25 year in prison; a sentence reduced by half as he had pleaded guilty. Otherwise he would have faced 50 years in prison, 10 years for each of the five counts. Mr. Sutthijittaseranee had been arrested on 18 December 2014 by a joint unit of police and military officers outside his house and was then taken to the 11th Military Circle in Bangkok together with his wife. Allegedly, he was questioned about being the user of a Facebook account under the name "Yai Daengdueat". On 22 December 2015, the Bangkok Military Court had issued an arrest warrant for him and he was brought to the Royal Thai Police's Technological Crime Suppression Division. On 25 December 2014, Mr. Sutthijittaseranee appeared before the Bangkok Military Court. His wife, who had been released, requested that Mr. Sutthijittaseranee be released on a bail of 400,000 Thai Baht. The court, however, did not grant him bail on the ground that he might have taken the opportunity to escape. The judge ordered that his trial be closed to the public due to the alleged sensitivity of the case. Mr. Sutthijittaseranee is currently serving his sentence at Khlong Prem Prison in Nonthaburi Province.

On 14 July 2015, Mr. **Hasadin Uraipaiwan** was convicted of violating article 112 of the Criminal Code and section 14 of the Computer Crime Act and sentenced to five years imprisonment by the Bangkok Military Court and was sentenced to five years in prison, instead of ten years, as he had pleaded guilty. On 24 April 2015, Mr. Uraipaiwan had been indicted by the Bangkok Military Prosecutor for violating article 112 of the Criminal Code and section 14 of the Computer Crime Act. He was accused of having posted on Internet video clips since 2009 that criticized the monarchy. He had been arrested by police officers from the Technological Crime Suppression Division on 11 February 2015 at a hotel in Bangkok, where they presented an arrest warrant issued by the Bangkok Military Court. Mr. Uraipaiwan is reportedly known as “Mr. Banpodj” on Facebook and other social media platforms. The authorities have alleged that the so-called “Banpodj network” is a network of people who want to discredit the monarchy through the use of internet and social media.

On 14 July 2015, **Mr. Wittaya Wongpoe** was convicted of violating article 112 of the Criminal Code and section 14 Computer Crime Act and sentenced by the Bangkok Military Court to five years imprisonment, instead of 10 years, as he had pleaded guilty. He was sentenced for posting contents defaming the monarchy on a Facebook profile named “Vladislave Vince”. Mr. Wongpoe had been arrested on 17 March 2015 at his apartment in Lamphun Province by police officers from Technological Crime Suppression Division. He had been brought to Lamphun Provincial Hall and detained there for one night before being transferred to 3rd Military Circle in Bangkok. On 21 March 2015, he had been brought before the Bangkok Military Court for further questioning. The prosecutor had rejected the bail request citing that he might have fled. He is currently detained at the Bangkok Remand Prison.

On 6 August 2015, **Mr. Samak Pantae** was convicted of violating article 112 of the Criminal Code and sentenced to five years imprisonment by the Chiang Rai Military Court. On 8 July 2014, Mr. Pantae had been arrested by officers from Terng District Police Station and accused of destroyed banners displaying photos of members of the Royal Family in Terng District in the Chang Rai Province. He had been indicted by the Chiang Rai Military Prosecutor on 30 September 2014 for violating article 112 of the Criminal Code. The court sentenced him to five years in prison, instead of ten years, as he had pleaded guilty. On 10 July 2015, Mr. Pantae had retracted his pre-trial statement and pleaded guilty after he was allegedly told by the prosecutor that seven more witnesses would be testifying against him, effectively prolonging his pre-trial detention.

Mr. Pantae has been in detention since his arrest. In late July 2014, Mr. Pantae’s lawyer submitted official documents issued by Chiang Rai Hospital to the Court

[REDACTED]. The Military Prosecutor reportedly argued that Mr. Pantae does not have any mental health impairments and requested that hearings take place to determine this fact. Mr. Pantae is currently detained at Chiang Rai

Provincial Prison, where he is held with other inmates. Mr. Pantae is reportedly not receiving adequate medical attention given that the prison does not have a doctor specialized in dealing with his condition.

On 7 August 2015, **Mr. Phongsak Sribunpeng**, a resident of Kanchaburi Province and a Red Shirt supporter, was convicted of violating Section 112 of the Criminal Code and sentenced to 30 years in prison, instead of 60 years, as he had pleaded guilty. On 31 March 2015, Mr. Sribunpeng had been indicted by the Bangkok Military Prosecutor for having allegedly violated article 112 of the Criminal Code and section 14 of the Computer Crime Act. He was accused of using a Facebook account under the name of “Sam Parr” to post six messages allegedly criticizing the King and other members of the Royal Family. The Court considered the six messages to be six distinct offences and originally sentenced him to 10 years of imprisonment for each offence, resulting in a total 60 years. The messages were reportedly posted on the Facebook account on 4 September 2013 and were left on-line until 29 November 2014. Mr. Sribunpeng had been summoned to report to the military under the NCPO order no 58/2014 issued on 9 June 2014, but did not comply. He was later arrested on 30 December 2014 and taken to Somdej Ekatosarot Camp in the Phitsanulok Province where he was interrogated for three days before being transferred to Bangkok. During his detention in Bangkok, he was reportedly threatened and pressured into confessing to the allegations against him by military officers. The Bangkok Military Prosecutor argued in the indictment that given that the messages in question were posted on-line from Bangkok, the case should fall under that jurisdiction.

On 7 August 2015, **Ms. Sasiwimol Patomwongfa-ngarm**, living in the Chiang Mai Province, was convicted of violating article 112 of the Criminal Code and section 14 of the Computer Crime Act and sentenced to 28 years in prison by the Chiang Mai Military Court for seven comments allegedly posted on Facebook. The Court sentenced Ms. Patomwongfa-ngarm to 28 years in prison, instead of 56 years (eight years in prison for each of the seven comments) as she had retracted her pre-trial statement and had pleaded guilty. Prior to the ruling, she had sent a letter to the Court asking for leniency and arguing that she had never taken any action against the monarchy or the government, but the request was dismissed. Ms. Patomwongfa-ngarm had been arrested by the police on 13 February 2015 and taken to the Chiang Mai Women’s Correctional Institute. Her lawyer requested that she be freed on bail four times but these requests were rejected by the Court.

Cases of four persons indicted under article 112 of the Criminal Code (also known as lèse-majesté law) and/or section 14 of the Computer Crime Act whose cases are tried by a military court, for having allegedly exercised their right to freedom of opinion and expression:

On 21 January 2015, the Bangkok Military Court announced it would hold witness examination hearings in the case of **Mr. Siraphob Kornaroot** from May

to October 2015. The judge ordered that the whole proceedings against Mr. Kornaroot be conducted in-camera on the ground that the case concerns alleged defamation of the King. Mr. Kornaroot is a Red Shirt activist who had been writing poems and articles on political issues and posting them online, including on his Facebook page, since 2010. He had been indicted on 24 September 2014 by the Bangkok Military Prosecutor for allegedly violating article 112 of the Criminal Code and section 14 of the Computer Crime Act for three comments which he had reportedly posted on his Facebook account in November 2009, December 2013, and January 2014. Mr. Kornaroot is currently detained at the Bangkok Remand Prison. His lawyer requested his bail on 12 September 2015, but it was rejected by the Military Court.

On 19 February 2015, **Mr. Jueseng Sae-kow** (also known by his pen name “Bundit Aneeya”), writer and social critic, was indicted before the Bangkok Military Court Prosecutor for allegedly violating article 112 of the Criminal Code. The police had arrested Mr. Sae-kow on 27 November 2014 after he had reportedly made a comment about the monarchy at a forum on political reform at Ratchadapisek Road in Bangkok, which was organized by the Innovation Party. The Innovation Party is a new political party which had been recently established and is not a formally recognized political party. On 28 November 2014, the military court approved his bail request of 400,000 Thai Baht due to the fact that he is elderly, on the condition that he would not travel, express a political opinion, or participate in activities which could create disharmony among the public. Mr. Sae-kow pleaded not guilty to the charges.

On 24 April 2015, **Mr. Nguenkhun Udonkunakorn**, a 43-year-old man, was indicted by the Bangkok Military Prosecutor for violating article 112 of the Criminal Code and section 14 of the Computer Crime Act. He is accused of being a member of the so-called ‘Banpodj network’. Mr. Udonkunakorn had been arrested on 29 January 2015 by plain-clothed military officers in the Muang District of the Samut Sakhon Province. Mr. Udonkunakorn had allegedly been blindfolded and then taken to the 11th Infantry Regiment, King’s Guard, in Bangkok, where he was detained in a dark room for three days and questioned by military officers regarding voice recordings containing comments which allegedly violate article 112 of the Criminal Code. The military officers alleged that the audio clips were posted on his Facebook account. On 2 February 2015, Mr. Udonkunakorn was transferred to Tung Song Hong Police Station in Bangkok, where he was allowed to call his wife. The police officers informed him that he was being investigated for posting these voice recordings in October 2014 in violation of article 112 of the Criminal Code and section 14 of the Computer Crime Act. On 3 February 2015, he was presented before the Bangkok Military Court which approved the police’s request to detain him. His lawyer filed a bail request on 23 February 2015 which was denied on the grounds of the alleged severity of the case. Mr. Udonkunakorn is currently detained at the Bangkok Remand Prison where he awaits trial.

In mid-April 2015, **Ms. Anchan Preelert** was indicted on 6 January 2015 for violating article 112 of the Criminal Code and section 14 of Computer Crime Act for allegedly posting a video clip which criticized the monarchy on a Facebook account called “Patch PrachPrakary”. She claimed she did not own this account. On 23 January 2015, the Technological Crime Suppression Division of the Royal Thai Police had filed a complaint with the Department of Special Investigation alleging that Ms. Preelert had violated article 112 of the Criminal Code and section 14 of the Computer Crime Act. On 25 January 2015, soldiers from the 9th Infantry Regiment conducted a search of Ms. Preelert’s home in the Kanchanaburi Province and arrested her. She had been detained under Martial law for seven days and she was then brought before the Bangkok Military Court which approved the police request to detain her. Ms. Preelert’s brother had filed a request to have her released on a Thai 400,000 baht bail, which the court rejected. The court argued that there was a risk that she might flee the country. Since 30 January 2015, she is detained at the Women’s Correctional Centre in Bangkok. On 4 December 2015, the Bangkok Military Court announced that the hearing will take place on 24 February 2016 and will be conducted behind closed doors, as the Court reasoned that this case could affect the feelings of the general public.

Case of one person accused under article 112 of the Criminal Code (also known as the lèse-majesté law), who is currently in detention and whose case is under the jurisdiction of the military court, for having allegedly exercised their right to freedom of opinion and expression:

In the morning of 19 February 2015, **Mr. Prajakchai Chumkam** went to the Government House’s Complaint Office to file a complaint. Upon arriving at the Government House, three military officers had provided him with a piece of paper on which he reportedly had written defamatory comments about the King. Subsequently, around ten police officers arrested him and took him to Dusit Police Station for questioning which lasted about 20 minutes. On the evening of the same day, he was arrested at his home in Bangkok’s Bang Khun Tien district by police officers and was brought to Dusit Police Station for further questioning. He was detained there until he was presented before the Bangkok Military Court on 22 February 2015 where an order for his detention was granted. He is currently detained at the Bangkok Remand Prison pending an investigation against him for violation of article 112 of the Criminal Code. Mr. Chumkam has several medical conditions for which he has not received the proper attention while in detention.

Cases of three persons arrested and detained under article 112 of the Criminal Code (also known as lèse-majesté law) and whose cases were brought before a military court, for having allegedly exercised their right to freedom of opinion and expression:

On 16 November 2014, police officers from the Crime Suppression Division in Bangkok summoned **Ms. Jaruwat Eiampong** to their office to question her regarding alleged posts of lèse-majesté content on her Facebook account. She

claimed that those comments were not posted by her but by her husband, **Mr. Anon Masin**, and his friend, **Mr. Chartchai Maneerat**, as a prank on her. She was reportedly detained in a military camp for one night before being transferred to the Technological Crime Suppression Division of the Royal Thai Police for interrogation. On 17 November, Mr. Masin was arrested in Bangkok and taken to the Sanampao military camp in Bangkok. On 18 November 2014, the Bangkok Military Court allowed the detention of Ms. Eiampong for 12 days at the Central Women Correctional Institution in Bangkok. On 19 November 2014, Mr. Masin and Mr. Maneerat were brought before the Bangkok Military Court, which allowed their detention. Mr. Masin and Mr. Maneerat did not file a petition for provisional release as they did not have mortgage securities and could not contact their families. On 28 November 2014, the detention of Ms. Eiampong, Mr. Masin and Mr. Maneerat was further extended by the Bangkok Military Court on the basis that the case was incomplete and the police required more time to gather evidence and check their criminal records. On 9 February 2015, Ms. Eiampong, Mr. Masin and Mr. Maneerat were released, one day past the maximum pre-trial detention period of 84 days. No charges have been filed against them, but the investigation by the police is still pending.

Cases of six persons sentenced by ordinary courts under article 112 of the Criminal Code (also known as lèse-majesté law) and/or section 14 of the Computer Crime Act, for having allegedly exercised their right to freedom opinion and expression:

On 10 March 2011, **Mr. Ekkachai Hongkangwan** was arrested by a police officer for alleged possession of 100 illegal VCDs, a CD writer, and 10 Wikileaks documents. On 28 March 2013, the Bangkok Criminal Court found Mr. Hongkangwan guilty under article 112 of the Criminal Code and section 54 (1) of the Film Act B.E. 2551 (2008). He was sentenced to three years and four months in prison for insult, defamation and threats against the Heir-apparent and fined 66,666 Thai Baht for operating a video business without license. He appealed his conviction and sentence. On 1 April 2013, Mr. Hongkangwan was denied bail by the Appeal Court on the basis of flight risk. On 8 May 2014, the Appeal Court upheld the Court of First Instance's verdict and sentence, but changed the offence from a violation of section 54(1) of the Film Act to a violation of section 38(1) of the Film Act. Mr. Hongkangwan's lawyer filed an appeal before the Supreme Court. On 9 October 2015, the Supreme Court upheld the verdict Mr. Hongkangwan but reduced his sentence to two years and eight months imprisonment.

Mr. Yossawaris Chuklom (also known as Jeng Dokjik) was accused of defaming the monarchy in a public statement given near Makkawan Bridge in Bangkok on 29 March 2010. Mr. Chuklom was accused of implicitly defaming the King by his ambiguous speech and by covering his mouth at one point in his speech while mentioning someone connected to the Privy Council of President Prem Tinsulanont. On 2 August 2011, the first day of his hearing, Mr. Chuklom

confessed to the charges against him. The court announced that it would deliver its verdict on 29 August 2011. On 29 August 2011, Mr. Chuklom could not appear in court for medical reasons. He later declared that he was retracting his confession and was going to defend his case. The hearing took place at the Bangkok Criminal Court until December 2012. On 17 January 2013, the Bangkok Criminal Court found Mr. Chuklom guilty as charged and sentenced him to two years in prison, instead of three years as he had given information to the Court for the benefit of the trial. To reach its verdict, the court interpreted Mr. Chuklom's speech and body language as a reference to the King, stating that covering his mouth with his hand indicated reference to someone in a majestic position, as he has not done so when speaking about other people who are not members of the royal family. Mr. Chuklom filed an appeal and, on 1 May 2014, the Court of Appeal upheld the verdict and sentence of the Criminal Court. After the verdict was issued, Mr. Chuklom was remanded to the Bangkok Remand Prison pending the Supreme Court's consideration of his request for temporary release. On that same day, his bail request was denied. On 23 September 2014, the Supreme Court eventually granted him a bail request at 700,000 Thai Baht. His case is currently pending before the Supreme Court.

On 3 December 2014, **Mr. Prasit Chaisrisa** a former Parliamentarian and a leader of United Front for Democracy against Dictatorship (UDD), was convicted of violating article 112 of the Criminal Code and sentenced to two years and six months imprisonment for a speech he had delivered on 7 May 2014. He reportedly has several health problems [REDACTED], and has serious difficulties walking. He is currently imprisoned at the Bangkok Remand Prison and has decided not to appeal his conviction and sentence. It is reported that the Bangkok Remand Prison does not provide adequate medical care for detainees.

On 23 February 2015, **Mr. Patiwat Saraiyaem** and **Ms. Porntip Munkhong (Opinion 43/2015 of the Working Group on Arbitrary Detention)** were convicted of violating article 112 of the Criminal Code and sentenced to two years and six months imprisonment. Both were a member of the now defunct Prakaifire Acting Troupe, which regularly staged political related plays. They were involved in a play which depicted a fictional monarch who was manipulated by his advisor. The Bangkok Criminal Court sentenced them to 2 years and half in prison, instead of five years as they had confessed to the allegations against them. Mr. Patiwat Saraiyaem and Ms. Porntip Munkhong are serving their sentence and decided not to present an appeal.

On 22 April 2015, **Mr. Udomsak Wattanaworachaiwathin** was sentenced by the Bangkok Appeal Court to two years in prison for violating article 112 of the Criminal Code. Mr. Wattanaworachaiwathin was arrested on 2 May 2006 for selling copies of the book "The Devil's Discus" which discusses circumstances surrounding the death of King Ananda Mahidol (King Rama IX) at a political demonstration near Lumpini Park in Bangkok. A police officer bought a copy of

the book from him and arrested him at the scene. On 17 April 2014, the Bangkok Criminal Court dismissed his case on the grounds that the prosecutor had failed to prove that Mr. Wattanaworachaiwathin had knowledge of the content of the book. In June 2014, the prosecutor appealed against the ruling. On 22 April 2015, the Appeal Court decided to reverse the decision of the Criminal Court on the grounds that, given that Mr. Wattanaworachaiwathin had been in the bookselling business for 20 years and that the back and front covers of the book had a photo of the King Rama IX and contained an excerpt of the book, he should have had known about its defamatory content. Therefore, the Appeal Court sentenced him to three years in prison, but decided to reduce the sentence to two years given that he had provided useful information to the court. Mr. Wattanaworachaiwathin is currently receiving medical treatment [REDACTED] and fears not being able to follow an appropriate treatment if sentenced to prison. His case is currently pending before the Supreme Court.

On 3 September 2015, Mr. **Chaleaw Chankiat** was sentenced by the Bangkok Appeal Court for violating article 112 of the Criminal Code and section 14 of the Computer Crime Act to two and a half years imprisonment, instead of five years as he had pleaded guilty. Mr. Chankiat had been summoned by the NCPO after the 22 May 2014 coup d'état. He had reported himself on 3 June 2014 and was detained for seven days by the military. On 9 June 2014, he was arrested for allegedly uploading a video on 4Share which was deemed lèse-majesté. On 10 June 2014, Mr. Chankiat had appeared at the Bangkok Criminal Court, where his bail request was rejected. On 1 September 2014, Mr. Chankiat was sentenced to 18 months in prison by the Court of First Instance, instead of three years as he had pleaded guilty, and his sentence was deferred for two years. On 8 September 2014, the Supreme Court granted bail to Mr. Chankiat after receiving 400,000 Thai Baht as a guarantee. On 8 October 2014, the prosecutor had filed an appeal against the ruling to suspend the sentence, citing the severity of the offence. The prosecutor had urged the Appeal Court to issue the maximum sentence to Mr. Chankiat to deter others from committing a similar crime. After the sentencing of the Appeal Court on 3 September 2015, his case is now pending before the Supreme Court.

Case of one person indicted under article 112 of the Criminal Code (also known as lèse-majesté law) and section 14 of the Computer Crime Act before an ordinary court, for having allegedly exercised their right to freedom opinion and expression:

On 6 March 2015, Mr. **Piya Jullakittipan** was indicted before the Bangkok Criminal Court for violating article 112 of the Criminal Code and section 14 of the Computer Crime Act, for allegedly posting two photos containing comments critical of the King on the Facebook account which goes by the name of “Mr. Pongsathon Banthon”. According to Mr. Jullakittipan, the Facebook account did not belong to him. The two photos concerned were uploaded on 27 July and 28 November 2013. On 11 December 2014, Mr. Jullakittipan was reportedly arrested

just outside his residence in Bangkok by approximately 30 plain-clothed police officers. He was then brought to a press conference at the Royal Thai Police's Technological Crime Suppression Division. On 13 December 2014, he was sent to Bangkok Remand Prison where he is currently detained. On 9 March 2015, the Bangkok Criminal Court ordered that the court proceedings be closed to the public on the grounds that a public hearing could affect national security.

Cases of three persons currently under the investigation by the police or the prosecutor under article 112 of the Criminal Code (also known as lèse-majesté law) and/or section 14 of the Computer Crime Act for having allegedly exercised their right to freedom of opinion and expression:

On 7 August 2014, Bangkok's Ratchadapisek Criminal Court, upon the request of the Department of Special Investigations, issued an arrest warrant against **Mr. Tanapon Bumrungsuk** for allegedly violating article 112 of the Criminal Code and section 14 of the Computer Crime Act. Mr. Bumrungsuk was an assistant of a former Member of Parliament of the now defunct People's Power Party. He was active in organizing activities against the then-government led by the Democratic Party in 2009. During this time, he started posting comments related to the Royal Projects and Crown Property Bureau on his Facebook account. It is reported that on 24 May 2010, around 20 officers from the Royal Thai Police and Department of Special Investigations conducted a search of his house, and his computer and laptop were confiscated. On 7 December 2012, he was arrested by police officers from Khlongluang District Police Station at a gas station in Pathum Thani Province where he was detained for one night for questioning. During his detention, he was allegedly punched and hit by police officers who yelled at him for being an anti-monarchist. On 8 December 2012, he was brought to the Department of Special Investigations where his arms and feet were chained. He was further questioned by officers of the Department of Special Investigations and was later granted bail the same night. After the military coup d'état on 22 May 2014, Mr. Bumrungsuk received information from the prosecutor that his case had been brought to the Ratchadapisek Criminal Court on 25 June 2014. Mr. Bumrungsuk is currently outside the country.

On 26 August 2014, the Criminal Court, upon the request of Chanasongkram District Police Station, issued an arrest warrant for **Mr. Jaran Ditapichai** for allegedly violating article 112 of the Criminal Code. Mr. Ditapichai is a former National Human Rights Commissioner of Thailand. He is also a former advisor to the Foreign Minister under the government led by the former Prime Minister Yingluck Shinawatra who was toppled in the 22 May 2014 coup d'état. The warrant for his arrest was reportedly related to his role as one of the organizers of the 14 October 1973 commemoration event held at Thammasat University in Bangkok in October 2013. The "Wolf Bride" play, for which **Mr. Patiwat Saraiyaem** (mentioned above) was convicted, was performed during this commemoration event. Reportedly, Mr. Ditapicahi is being investigated for violating lèse-majesté law and is currently out of Thailand.

On 10 March 2016, **Mr. Sombat Boonngam-anong**, a social and political activist and leader of the Red Sunday Group, is due to appear at Roi-Et Provincial Prosecutor to hear whether or not he would be formally indicted for violating lèse-majesté law and Computer Crime Act. On 5 March 2014, a lèse-majesté complaint had been filed against Mr. Boonngam-anong alleging that he had posted an edited photo deemed lèse-majesté on Facebook. On 5 June 2014, Mr. Boonngam-anong had been arrested by officials from the Technological Crime Suppression Division and military officers from 21st Infantry Regiment at his home in Chonburi Province and was brought to the Regiment for questioning. On 1 July 2014, he was brought to Roi-Et Police Station for questioning by the police officers. He was then release on bail after submitted 300,000 Thai Baht as a guarantee, under the condition that he could not conduct activities which encourage people to break the law and he cannot travel outside the country.

We express particular concern at the continued restrictions on multiple rights and fundamental guarantees, including on the right to freedom of expression that particularly affect the rights of political opponents in Thailand following the military coup of 22 May 2014.

The present communication follows a joint urgent appeal sent to your Excellency's Government on 8 December 2014 (See A/HRC/29/50, case THA 13/2014) concerning allegations related to prosecutions, detention and/or conviction of 21 persons under the lèse-majesté law. Five of the individuals named in the above-mentioned THA 13/2014 communication of 8 December 2014 are also the subject of this communication. Furthermore, the Working Group on Arbitrary Detention has sent a regular communication regarding Ms. Porntip Munkhong, also mentioned in this Urgent Appeal. We take note of the preliminary information received from your Excellency's Government on 5 October 2015 in response to the regular communication of the Working Group on Arbitrary Detention. We also take note of the preliminary response from your Excellency's Government on 10 December 2014 to the joint communication. We look forward to receiving your Excellency's Government's response to the questions which remain unanswered in the joint urgent appeal.

In addition to this, several communications have been addressed to your Excellency's Government referring to allegations similar to those presented in this communication, including on the application of article 112 of the Criminal Code and section 14 of the Computer Crime Act and the exercise of the right to freedom of opinion and expression. These communications include: JUA THA 13/2014 (08/12/14); JUA THA 10/2014 (12/09/2014); JAL THA 8/2014 (19/08/2014); JAL THA 3/2014 (30/04/2014); UA THA 1/2014 (25/03/2014); AL THA 13/2012 (14/12/2012); JUA THA 10/2011 (06/01/2012); UA THA 9/2011 (20/12/2011); UA THA 5/2011 (10/06/2011). We take note with appreciation of the response provided to the following communications (in addition to THA 13/2014 (08/12/14)): THA 10/2014 (12/09/2014); JAL THA 8/2014 (19/08/2014); AL THA 13/2012 (14/12/2012); JUA THA 10/2011 (06/01/2012); UA THA 9/2011 (20/12/2011); UA THA 5/2011 (10/06/2011). We look

forward to receiving responses to the communications that remain unanswered: JAL THA 3/2014 (30/04/2014) and UA THA 1/2014 (25/03/2014).

In its reply of 10 December 2014 (THA 13/2014, 08/12/14), referring to the application of the *lèse-majesté* law, your Excellency's Government mentions the necessity for a "certain degree of restriction in order to protect the rights or reputations of others and to uphold national security and public order." In this regard, we would like to recall the State's international obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR) (ratified by Thailand on 29 October 1996) which provides that any limitation on the right to freedom of expression must be provided for by law; may only be imposed for legitimate grounds, as set forth in article 19(3) of the ICCPR; and must conform to the strict tests of necessity and proportionality. Undue restrictions also exert a chilling effect on the right to freedom of expression of the persons concerned and of others.

We wish to emphasize the inconformity of the application of article 112 of the Criminal Code and section 14 of the Computer Crime Act with the provisions of article 19 of the ICCPR, as these do not meet the strict tests of necessity and proportionality. In particular, we would like to express concern at the prosecutions, detentions and the sharp increase in lengthy prison sentences, imposed under articles 112 of the Criminal Code and section 14 of the Computer Crime Act, for acts that seem to constitute a legitimate exercise of people's right to freedom of opinion and expression.

We would like to reiterate that all public figures, including those exercising the highest political authority such as heads of State, are legitimately subject to criticism and political opposition. 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 Covenant. *Lèse-majesté* and defamation laws should be crafted with care to ensure that they comply with paragraph 3 of article 19 and that they do not serve, in practice, to stifle freedom of expression (as provided by the Human Rights Committee's General Comment No. 34, CCPR/C/GC/34). We are also particularly concerned at the "chilling" or deterrent effect that these legal provisions, and defamation laws in general, have on the legitimate exercise of the right to freedom of opinion and expression.

In this connection, as the application of these legal provisions seems to particularly target and criminalize individuals for expressing political opposition, especially following the 22 May 2014 coup d'état, we also would like to refer to articles 21 and 22 of the ICCPR that guarantee the rights to freedom of peaceful assembly and of association. In particular, the principles enunciated by Human Rights Council resolution 24/5, in particular operative paragraph 2, "reminds States of their obligation to respect and fully protect the rights of all individuals to meet and assemble peacefully, ... including persons espousing minority or dissenting views or beliefs... seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of

association are in accordance with their obligations under international human rights law”.

We would also like to refer your Excellency’s Government to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5 and 6.

We would like to 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 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We also express our grave concern in relation to the trials of the above-mentioned individuals before military courts. We note with appreciation your Excellency’s Government’s response of 10 December 2015, which indicates that “for those found guilty, they have the right to appeal with higher courts”. We remain however highly concerned at article 61 of the Organization of Military Court Act, which provides that the right to appeal to a higher court and for a verdict to be reviewed is not guaranteed for the period between 20 May 2014 and 1 April 2015, during which the Martial law was imposed. We also express concerns on the lack of clarity on the availability of appeal procedures before military courts for the individuals whose sentences were handed down during the period of the Martial law.

We further take this opportunity to reiterate our concerns at the lack of transparency in proceedings before military 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. Although we note the response of your Excellency’s Government in its letter of 10 December 2015 according to which “Thai law provides that the judge may use discretion to hold closed trials in certain cases if they are deemed to involve sensitive matters in the interest of public order, good morals or national security”, we reiterate our concerns in relation to this practice, which appears to be in contradiction to the right to a fair and public hearing, as enshrined, *inter alia*, in article 14 of the ICCPR.

We are also extremely concerned about the recurrent denial of release on bail in cases of *lèse-majesté*, including in the cases of persons with serious medical conditions and also at allegations regarding the lack of access to adequate health services and medical treatment in detention, or reasonable accommodation in the cases of persons with disabilities, in particular in the case of Mr. Samak Pantae. In this connection, we would like to refer your Excellency’s Government to article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Thailand on 5 September 1999, which establishes that States have an obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees to

preventive, curative and palliative health services. (see General Comment 14, Para.34) In addition, the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111, establish that prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

We welcome your Excellency's Government's statement in its response of 10 December 2015 indicating that it "attaches great importance to the freedom of expression" in Thailand, and welcome its recognition that the *lèse-majesté* law, "like any law in every legal system of the world, is open to the process of accommodating itself to the ever-changing social conditions". Therefore, in view of the urgency of the matter and the seriousness of the allegations and concerns expressed above, we again call on your Excellency's Government to take all necessary measures to repeal or amend article 112 of the Criminal Code and section 14 of the Computer Crime Act, bring these provisions in conformity with international human rights law and standards, and provide all the guarantees of due process and access to fair trial to the above-mentioned individuals.

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 detailed information on the charges and criminal proceedings against the persons mentioned above and explain how these are compatible with international human rights standards, in particular articles 9, 14, 19, 21, and 22 of the ICCPR. Please also provide information regarding the legal grounds invoked for holding closed-door proceedings for *lèse-majesté* related cases and explain how such measures are in conformity with the right to a fair and public hearing as enshrined, *inter alia*, in article 14 of the ICCPR.
3. Please provide information on the justifications for the use of the *lèse-majesté* law to protect Thailand's national security and how the existence of the *lèse-majesté* law is related to a genuine purpose of, and demonstrates in effect, protecting the country's existence or its territorial integrity against the use of force.
4. Please provide information on the legal grounds invoked for the refusal of bail requests in the above-mentioned cases, including cases of persons with serious health conditions, and how these measures are compatible with international standards, namely article 9 and 14 of the ICCPR, and article 12 of ICESCR.

5. Please provide information on the remedial actions that have been undertaken for Ms. Jaruwan Eiampong, Mr. Anon Masin and Mr. Chartchai Maneerat after they were held in detention for 84 days.

6. Please provide information and explanation on whether or not individuals who were convicted by the Military Court during the imposition of Martial law can now appeal the decision given that the Martial law had been lifted.

7. Please provide detailed clarification on how the implementation of lèse-majesté law has not restricted people's rights to freedom of expression as stated by your Excellency's Government in its response to the joint urgent appeal of 10 December 2014.

8. Please provide any information in relation to progress and measures taken towards the repeal or amendment of article 112 of the Criminal Code and section 14 of the Computer Crime Act, in order to bring these provisions in conformity with international human rights law and standards.

While awaiting a reply, we take the opportunity to reiterate our readiness to provide technical assistance to your Excellency's Government, including through a country visit to Thailand by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We also would like to kindly request that a copy of this letter be shared with the highest authority in the National Council for Peace and Order including General Prayuth Chan-ocha, Chief of the National Council for Peace and Order, and General Prawit Wongsuwan, Minister of Defense.

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

José Guevara
First Vice-Chair of the Working Group on Arbitrary Detention

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

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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Michel Forst
Special Rapporteur on the situation of human rights defenders

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers