

Lawyers' Rights Watch Canada

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Thailand: Four years of arbitrary detention of human rights defender, Mr. Somyot Prueksakasemsuk

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Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law through advocacy, education and research. LRWC is an NGO in Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (UN).

April 30, 2015 marked the fourth anniversary of detention of Mr. Somyot Prueksakasemsuk, a human rights defender and magazine editor, on lèse majesté charges under Section 112 of Thailand's *Criminal Code*, which states that "whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years."¹ Currently awaiting appeal of his January 2013 conviction and eleven-year jail sentence, Mr. Somyot has been denied bail 16 times despite a finding by the United Nations (UN) Working Group on Arbitrary Detention (WGAD) that he is being arbitrarily detained. The WGAD concurred with the Special Rapporteur on the right to freedom of opinion and expression that Thailand's Criminal Code Section 112 suppresses "important debates on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression."² The conviction and sentencing of Mr. Somyot contravenes Thailand's obligations under international law and demonstrates a pattern of judicial harassment against him as a human rights defender. Mr. Somyot should be released immediately and his prosecution under Thailand's lèse majesté laws immediately halted.

Summary of Facts

Mr. Somyot has been a labour rights activist since the early 1980s and is affiliated with the Democratic Alliance of Trade Unions. He is known for his active support for the empowerment of the workers' movement and the right to freedom of association both in Thailand and internationally.

He is the former editor of the magazine *Voice of the Oppressed (Voice of Taksin)*³ which was banned in May 2010. The material on which the lèse majesté charges are based was a satirical article written not by Mr. Somyot but by an author with the pseudonym "Jit Polchan" and published in the

¹ *Criminal Code* B.E. 2499, English language translation available at <http://www.thailandlawonline.com/laws-in-thailand/thailand-criminal-law-text-translation#chapter-1>

² Opinions adopted by the Working Group on Arbitrary Detention at its 64th session, 27–31 August 2012, No. 35/2012 (Thailand), Communication addressed to the Government on 15 June 2012 Concerning Somyot Prueksakasemsuk, A/HRC/WGAD/2012/35, Para 20, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/183/84/PDF/G1218384.pdf>

³ In the Thai language, "Voice of Taksin" is a play on words meaning "Voice of the Oppressed."

March 2010 edition of *Voice of Taksin*. On 30 April 2011, Mr. Somyot was arrested, five days after he held a press conference in Bangkok launching a campaign to collect 10,000 signatures to petition for a parliamentary review of Section 112 of the *Criminal Code* on the grounds that the law contradicts human rights principles. Unknown to Mr. Somyot at that time was that the arrest warrant for investigation on Section 112 charges had been issued two months earlier, in February 2011. Although authorities had ample opportunity to arrest Mr. Somyot between February and April in Bangkok, the warrant was not executed until he tried to cross a national border in Aranyaprathet district, Sa Kaeo Province, as he had done on several occasions since 2010 as part of his tour business leading Thai tourists to visit Angkor Wat in Cambodia. After his arrest, Mr. Somyot was held without bail for the full 84 days allowed under the *Criminal Code* for investigative detention before being formally charged with two counts of lèse majesté on 26 July 2011.

Mr. Somyot was denied pre-trial release, and twenty-two months later, on January 23, 2013, the Bangkok Criminal Court sentenced him to 10 years in prison on two counts of lèse majesté for allowing the publication of two satirical articles in the *Voice of Taksin* that were deemed to have insulted the monarchy. Added to the 10 year sentence was a year's suspended jail term for a previous charge of defaming General Saprang Kalayanamit, a leader of the 2006 royalist coup, making it an 11-year prison term.

On September 19, 2014, the Court of Appeals upheld the conviction. The court failed to inform Mr. Somyot, his lawyer, and his family members that the hearing would take place on that day. This contravenes Thailand's obligations under international law.

Mr. Somyot's requests for bail have been denied 16 times. He was denied bail for the sixteenth time on November 18, 2014, the day before he filed his appeal to the Supreme Court against the confirmation of his conviction by the Court of Appeals. He remains incarcerated in Bangkok Remand Prison pending this appeal, for which no date has been set. There are concerns for Mr. Somyot's health, particularly given long waiting periods for health care in the Bangkok Remand Prison. The UN Human Rights Committee has stated that international human rights law requires State authorities to provide adequate or appropriate and timely medical care in accordance with professional medical standards.⁴

Violations of international human rights law

Mr. Somyot's continued detention violates the right to pre-trial release under the *International Convention on Civil and Political Rights* (ICCPR) and Principles 36-39 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988).⁵ Under national and

⁴ Lawyers' Rights Watch Canada, "Prisoners: The Right to Medical Treatment: Summary of Preliminary Research," August 2013, citing Human Rights Committee 'Concluding Observations: Georgia' (2002) UN Doc A/57/40 vol I 53 para 78(7); *Pinto v. Trinidad and Tobago* (Communication No. 232/1987) Report of the Human Rights Committee vol 2 UN Doc A/45/40 p. 69 para 12.7; *Kelly v. Jamaica* (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7; Human Rights Committee 'Concluding Observations: Portugal' (2003) UN Doc A/58/40 vol I 56 para 83(11); Human Rights Committee 'Concluding Observations: Cambodia' (1999) UN Doc A/54/40 vol I 57 para 306; Human Rights Committee 'Concluding Observations: Congo' (2000) UN Doc A/55/40 vol I 43 para 282; Human Rights Committee 'Concluding Observations: Mongolia' (2000) UN Doc A/55/40 vol I 49 para 332; Human Rights Committee 'Concluding Observations: Syrian Arab Republic' (2001) UN Doc A/56/40 vol I 70 para 81(13). LRWC report available at <http://www.lrwc.org/prisoners-the-right-to-medical-treatment-summary-of-preliminary-research-report/>.

⁵ International law on pre-trial release is based on the presumption of innocence and requires that the liberty of a person not be constrained beyond the limits demonstrated in evidence presented to the court by the prosecutor as being strictly necessary to prevent flight or interference with investigation. For details on the Thailand: Arbitrary detention of human rights defender, Mr. Somyot Prueksakasemsuk 2 of 5

international law, the right to bail can only be restricted on limited and precisely defined grounds, that is, when the prosecution has established a risk of flight, recurrence or interference with evidence and that there are no means other than detention to prevent the established risks. Once the appellant has established that the appeal is not frivolous and that he does not pose a danger to the public, release pending appeal is warranted. The ruling of the UN Working Group on Arbitrary Detention (WGAD) appears to establish the merit of the appeal and Mr. Somyot's record of peaceful and responsible community service establishes the second.

In an opinion issued on August 30, 2012, the WGAD ruled that Mr. Somyot's detention was arbitrary, being in contravention of Articles 19 of the *Universal Declaration of Human Rights* (UDHR) and 19(2) of the ICCPR. Thus, the detention of Mr. Somyot is unlawful under international law binding on Thailand. The WGAD called on the authorities to release Mr. Somyot and award him compensation.

The extremely harsh sentence imposed on Mr. Somyot is part of a disturbing trend in which *lèse majesté* charges are used for political purposes to silence the lawful exercise of freedom of expression guaranteed by Article 19 of the ICCPR. There has been an alarming escalation of *lèse majesté* charges against human rights defenders and dissidents since the military coup d'état on 22 May 2014. Nineteen individuals, including Mr. Somyot, are currently serving prison terms after being found guilty of violating Section 112 of the *Criminal Code*. In addition, at least another 16 remain detained awaiting trial on *lèse majesté* charges.

In September 2011, the UN Human Rights Committee issued General Comment 34 which stated that

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.... Moreover, 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. Accordingly, the Committee expresses concern regarding laws on such matters as, *lèse majesté*, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration (footnotes in original omitted).⁶

On 7 October 2011, several States raised concerns regarding *lèse majesté* laws during the consideration of the situation of human rights in Thailand through the UN Universal Periodic Review. On 10 October 2011, the United Nations Special Rapporteur on the right to freedom of opinion and expression, Frank La Rue, urged Thailand to urgently review and amend *lèse majesté* laws (Section 112 of the *Criminal Code* and the 2007 *Computer Crimes Act*), emphasizing that

[t]he threat of a long prison sentence and vagueness of what kinds of expression constitute defamation, insult, or threat to the monarchy, encourage self-censorship and stifle important

right to pre-trial release, see Lois Leslie, *Pre-trial release and the right to be presumed innocent: A handbook on international law rights to pre-trial release* (Vancouver, Canada: Lawyers' Rights Watch Canada, 2013), available online: <http://lrwc.org/handbook-pre-trial-release-and-the-right-to-be-presumed-innocent>

⁶ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, available at: <http://www.refworld.org/docid/4ed34b562.html>
Thailand: Arbitrary detention of human rights defender, Mr. Somyot Prueksakasemsuk 3 of 5

debates on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression.⁷

The United Nations *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (*Declaration on Human Rights Defenders*), adopted by consensus by the UN General Assembly in 1999⁸, recognizes the legitimacy of the activities of human rights defenders, their right to participate in peaceful activities against violations of human rights, and calls on States to ensure that they can carry out their activities without fear of reprisals. In particular, Article 12 of the *Declaration on Human Rights Defenders* states:

(1) Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

(2) The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, 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 present Declaration.

Recommendations

Thailand should:

1. Ensure the immediate release of Mr. Somyot Prueksakasemsuk pending the appeal to the Supreme Court bail in accordance with the provisions of the ICCPR and fair trial standards under domestic and international law;
2. Ensure that Mr. Somyot is provided pending his release, with adequate, appropriate and timely medical care in accordance with professional medical standards;⁹
3. Ensure that all prosecutions under Thailand's lèse majesté laws are immediately halted and that those imprisoned under such charges are released;
4. Conduct broad-based public consultations to review section 112 of the *Criminal Code*, the 2007 *Computer Crimes Act* and other criminal laws with a view to repealing or amending them to bring them into conformity with Thailand's international human rights obligations;

⁷ Frank La Rue, Special Rapporteur on the right to freedom of opinion and expression, "Thailand: Freedom of expression: UN expert recommends amendment of lèse majesté laws," Office of the UN High Commission on Human Rights, 10 October 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11478&LangID=E#sthash.zxPi5lU6.dpuf>

⁸ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>. The Declaration, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding including the ICCPR. The Declaration was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation.

⁹ *Supra* note 4.

5. Withdraw NCPO Orders 11/2557 and 33/2557,¹⁰ and take such other measures necessary to fully restore the independence of prosecutors and judges and to ensure the protection of rights protected by the ICCPR including fair trial rights, the presumption of innocence, pre-trial and pre-appeal release rights and freedom of expression;
6. Guarantee in all circumstances that all human rights defenders in Thailand, especially those working on freedom of expression, are able to carry out their legitimate human rights activities without fear of reprisals and free of all restrictions, including judicial harassment; and
7. Restore democratic rule through free and fair elections.

¹⁰ On 22 May 2014, the NCPO issued Order No. 11/2557 unlawfully suspending Thailand's 2007 Constitution and ordering that "[a]ll Courts shall continue to function and adjudicate on cases as prescribed by the law and the Announcement of the National Peace and Order Maintaining Council." Announcement of the National Peace and Order Maintaining Council No. 11/2557: Subject: Termination of the Constitution of the Kingdom of Thailand," available at <http://www.thaigov.go.th/announcement-2/item/83702-announcement-of-the-national-peace-and-order-maintaining-council-no-33/2557-subject-request-for-cooperation-from-the-courts-independent-organizations-and-other-agencies.html>. On 24 May 2014, the NCPO clarified Order 11/2557, stating:

With regard to the Announcement of the NCPO (formerly NPOMC) No. 11/2557 dated 22 May 2557 on the termination of the Constitution of the Kingdom of Thailand, which stipulates that all Courts are to continue to hear and adjudicate cases according to the law and the Announcements of the NCPO, and which requires all independent organizations and other agencies established under the Constitution B.E. 2550 (2007) to continue to function as usual; in order to ensure conformity of public understanding and unity in resolving the political conflict peacefully, the NCPO asked that all Courts, independent organizations and other agencies refrain from expressing opinions which might create misunderstanding, confusion and polarization among the public such that it affects the functioning of the officers of the NCPO (emphasis added). National Peace and Order Maintaining Council, "Announcement of the National Peace and Order Maintaining Council No. 33/2557 Subject: Request for cooperation from the Courts, Independent Organizations and other Agencies," available online: <http://www.thaigov.go.th/announcement-2/item/83702-announcement-of-the-national-peace-and-order-maintaining-council-no-33/2557-subject-request-for-cooperation-from-the-courts-independent-organizations-and-other-agencies.html>

These NCPO orders continue in effect after the invocation of Article 44 of the *Constitution of the Kingdom of Thailand (Interim)*, BE 2557 (2014), English language translation, available at http://en.wikisource.org/wiki/Constitution_of_the_Kingdom_of_Thailand_%28Interim%29,_Buddhist_Era_2557_%282014%29. This interim Constitution fails to measure up to international human rights standards. See United Nations Office of High Commissioner for Human Rights, "Human rights analysis of the 2014 Interim Constitution of the Kingdom of Thailand," October 2014, available at <http://bangkok.ohchr.org/files/Interim%20Com%20analysis%20narrative%201410%20fin.pdf>.