

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL THA 5/2024
(Please use this reference in your reply)

30 April 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 and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 52/9 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 legal petition by Thailand's Election Commission to dissolve the opposition Move Forward Party.**

The Move Forward Party (MFP) is a social democratic and progressive political party in Thailand. The party, which was led by Mr. Pita Limjaroenrat at the time, had emerged as the largest party in the 2023 general election after promising major progressive reforms, including to reform the royal defamation law, Article 112 (lèse-majesté) of the Criminal Code, which carries heavy charges, including long-term prison sentences, for defaming, insulting or threatening the Thai monarchy. However, the party and its former leader were blocked from forming a government and have faced legal actions.

According to the information received:

On 31 January 2024, the Constitutional Court ruled that MFP's pledge to reform the royal defamation law, Article 112 (lèse-majesté) of the Criminal Code, was unlawful.

The Court's ruling stated that the MFP proposal to amend article 112 of the Criminal Code, including the requirement to reduce penalties, the exemption from criminal liability for statements made in good faith, the removal of article 112 from the category of liability related to national security, and the requirement that only the person who made the report must file the case with the Bureau of the Royal Household, may indicate their intention to undermine the protection of the monarchy through the legislative process. The Court declared that MFP and its leader's actions proposing to amend article 112 (lèse-majesté) of the Criminal Code, using said proposal in their election campaign in 2023, and continuing to campaign to amend the lèse-majesté law after the May 2023 election were considered "as an attempt to overthrow the government and as evidence of an intention to undermine the institution of the monarchy, which could lead to the impairment, deterioration and weakening of the institution, ultimately resulting in the fall of the democratic government with the King as Head of State".

The ruling was made public through the Royal Gazette in February 2024, which means the ruling is set as precedent. As the Constitutional Court found

that the actions of the MFP and its former leader Mr. **Pita Limjaroenrat** were an attempt to overthrow the government with the King as the Head of the State, it also prohibited Mr. Pita Limjaroenrat and the party from expressing their opinions, speaking, writing, publishing, advertising, or using any other means of communication which would call for the amendment or to abolish article 112 of the Criminal Code. The Court also stated that article 112 may only be amended through the legitimate legislative process.

On 12 March 2024, Thailand's Election Commission unanimously found that the MFP attempted to overthrow Constitutional Monarchy and acted in a way deemed hostile to Constitutional Monarchy. On 18 March 2024, the Election Commission submitted a petition to the Constitutional Court to dissolve the MFP and bar its executive members from politics, under section 92 (1) and (2) of Thailand's Organic Act on Political Parties B.E.2560 (2017).

On 3 April 2024, the Constitutional Court accepted the petition from the Election Commission to dissolve the Move Forward Party. It implies that the party may be dissolved any time from now.

On 21 February 2020, the Future Forward Party, the MFP's predecessor, was dissolved by the Constitutional Court in relation to a policy they proposed on military reform, and its leaders were banned from participating in politics in Thailand for 10 years.

Reportedly, at least 44 MFP members of parliament, including Mr. Pita Limjaroenrat, are being investigated by the National Anti-Corruption Commission (NACC) following a separate petition accusing them of serious ethical violations over their proposed draft bill to amend the lèse-majesté law together with four other bills to the parliament in February 2021. If found guilty, they could face a lifetime political ban.

While we do not want to prejudge the accuracy of these allegations, we are very concerned at the potential dissolution of the MFP and barring of its executive members from politics, which appears to be directly related to their open criticism and political agenda to reform royal defamation laws, in particular article 112 of the Criminal Code, in the country. We are alarmed that if the party currently leading the opposition and the largest group in the House of Representatives, is disbanded, this would have a chilling effect on democracy and civic space in Thailand, including the right to freedom of expression, in particular political expression. Reportedly, the dissolution of the MFP would disenfranchise over 14 million voters in Thailand, as well as raise questions about their representation within the country's electoral system.

We are concerned about the practice of disbanding political parties in the country. Since 2006, nine political parties have been dissolved. In this regard, we remind your Excellency's Government of its responsibilities as signatory to the International Covenant on Civil and Political Rights to uphold and guarantee the rights of freedom of opinion and expression and freedom of association, under article 19 and 22. We are particularly concerned at the chilling effect that the violation of these provisions may have on democracy in the country.

We reiterate our concern 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 are concerned that the lèse-majesté laws are being used by the government as a political tool to stifle dissent and political opponents and carry extremely heavy penalties for those charged. 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, desacato, disrespect for authority, disrespect for flags and symbols, defamation of the head of state 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 from criticism and political opposition (General Comment No. 34). We reiterate our concerns raised in previous communications [THA 3/2024](#), [AL THA 2/2023](#) and [AL THA 1/2023](#) regarding the application of article 112 of the Criminal Code and its incompatibility with international human rights norms, in particular its incompatibility with article 19 of the International Covenant on Civil and Political Rights (ICCPR).

Finally, we recall that in 2017 the Human Rights Committee expressed its concerns about the 'extreme sentencing practice' under article 112 and called on Thailand to bring the legislation in line with article 19 of the ICCPR. We are concerned that although in the last Universal Periodical Review in 2021, Thailand noted recommendations related to amending its lèse majesté law in the Criminal Code, to date no reform has taken place.

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 outline the legal basis explaining how the MFP's pledge to reform the royal defamation law, article 112 (lèse-majesté) of the Criminal Code was unlawful, and explain how this is in line with Thailand's obligations under international human rights law.
3. 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, including its obligations as signatory of the ICCPR.
4. In the aftermath of the 2023 general election, when the MFP was blocked from forming a government after emerging as the largest party, please outline how your Excellency's Government will ensure respect for freedom of association and freedom of expression.

5. Please outline the steps taken by your Excellency's Government to ensure that the fundamental principles of freedom of opinion and expression, freedom of association are guaranteed to all, including opposition politicians and those who are critical of the monarchy and call for democratic reforms.

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.

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. We also reiterate our continued readiness to engage with your Excellency's government in constructive dialogue and to provide technical assistance to resolve this and other cases relating to the rights of freedom of expression and association.

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

Clement Nyaletsossi Voule

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, which guarantee the rights to freedom of expression and opinion and freedom of association respectively.

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 3/2024, 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).

Finally, we draw your attention to article 22 of the ICCPR, which guarantees ‘Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.’ It also states that ‘No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.’ We refer to Human Rights Council resolution 24/5 of 2013 which reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, as well as to ensure that any restrictions on these are in accordance with their obligations under international human rights law.